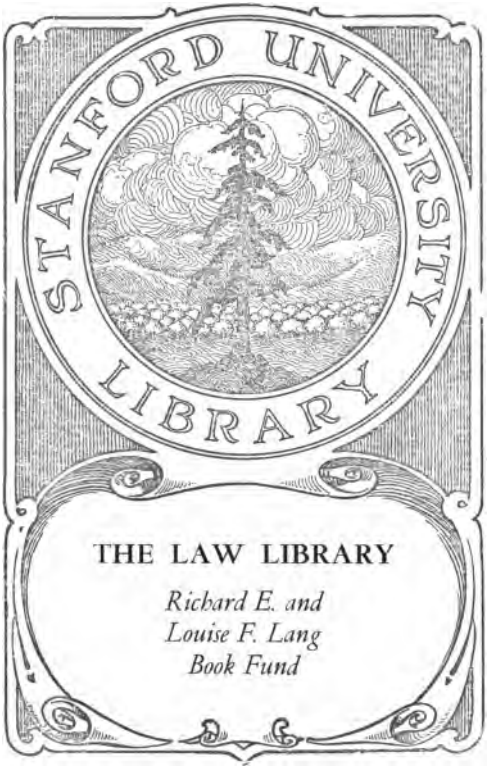
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A

NARRATIVE OF PROCEDURE

BEFORE

The Court of Session,

AND

CIRCUMSTANCES CONNECTED THEREWITH,

IN

THE TRIAL

OF

JOHN HAY,

WHO WAS PROSECUTED

AT THE INSTANCE OF THE

LORD ADVOCATE OF SCOTLAND,

AND WITHOUT THE VERDICT OF A JURY, SENTENCED TO

FOUR MONTHS IMPRISONMENT,

BY THE

Judges of the Court of Session.

"I take this opportunity to inform you, Sir, that Acts of Sederunt "ARE THE LAW OF THE LAND."

Lord President Hope's Address to Mr Hay, 13th February, 1818.

EDINBURGH:

PRINTED BY D. WEBSTER AND SON, NO. 6, HORSE WYND,
FOR JOHN HAY.

1822.

TO

THE RIGHT HONOURABLE

ROBERT PEEL,

SECRETARY OF STATE FOR THE

Home Department, &c. &c.

SIR,

THE exalted situation which you occupy in his Majesty's councils, and the access you have to the ear of your Sovereign, point you out as the individual whom I ought to address in laying before the public my present complaint. As Secretary of State for the Home Department, the Lord Advocate of Scotland is subject to your control; and if it has so happened that his Lordship, in the *name and authority of his Prince*, has oppressed a subject, deprived him of his property, and afterwards harrassed the same injured individual with vexatious prosecutions contrary to law, in order to accomplish sinister objects, or to gratify the private malice of others—if that can be established, I submit, if his Lordship has not prostituted the duties of his office, degraded the authority of his Royal Master, and brought into contempt the judicial proceedings of the country.

Whatever difference of opinion may exist regarding the

best method of carrying on the Government, consistent with the dignity of the Crown and the interest of the People, no difference of opinion does exist respecting the necessity of *preserving* our Constitution as established by law. You are well aware that there are four prominent features in that Constitution which distinguishes it from all other Monarchical Governments. *First*, Our persons and our property are to be in the keeping of Laws made by our own Representatives in Parliament. *Secondly*, When charged with crime, the accused is to be tried by a disinterested Jury; and in that prosecution no man can be admitted as a Judge, a Juryman, or a Witness, who has an interest in the conviction. *Thirdly*, The doors of our Courts of Justice are to be open; and in open Court, in the presence of the parties and the public, the Judges are to deliver their opinions and votes on the cause before the Court. And, *fourthly*, No Judge, Crown Lawyer, or any other person, can prevent the publishing of Judicial Decisions after a final judgment is pronounced.

It is, however, my painful duty to inform you, as a Minister of the Crown, that in direct violation of these fixed and incontrovertible positions, property belonging to me was carried off by authority of a law made by Judges, and never restored; that I was prosecuted by the Lord Advocate, in the *name of his Majesty, not before a disinterested Jury*, but before the very men who had wronged me, and who were the Party and the Judges in their own cause. In that prosecution, these Judges did not deliver their opinions in public Court, they decided the cause in *a private room with shut doors*, and from that private room the Public Prosecutor accompanied them into Court; and further, the said individual, Sir William Rae, caused the Manuscript Report of a question settled by final interlocutor, and the printed pleadings on both sides, belonging to me, to be carried off from a Newspaper Office in Edinburgh, to prevent a final decision of the Court of Session from being made known to the Public.

This statement, Sir, must either be false or true. If false, I have fearfully and irrecoverably committed myself; and if true, it is a truth entitled to the serious consideration of the public at large. The man who can, on cool reflection, view this subject as an affair which *only concerns* the humble and obscure individual who is now addressing you, is not an object of censure, but of sympathy.

In whatever light the present House of Commons may view such complaints and such encroachments upon their Legislative functions, those Representatives of the People who placed the House of Brunswick upon the Throne, and who perfected that Constitution so much admired, did not view with indifference acts so monstrous, and proceedings so unconstitutional, as I now complain of; nor were they backward in correcting them. Permit me, Sir, to draw your attention to the speeches made, and proceedings adopted, in the House of Commons in 1681, when inquiring into the conduct of Chief Justice Scroggs.

I do this in order to show with what indignation the Representatives of the People then viewed the conduct of Judges, who attempted to supersede them in their functions, and with what stedfastness and fidelity they supported the rights of their constituents, and, with these rights, the vital principles of the constitution itself. Mr Booth, afterwards Earl of Warrington, in addressing Parliament on this subject, spoke to the following effect:—"Of what "use is it for this House to make laws, if they are not to "be executed, and if Judges are to make laws of their own. "Your laws then, Sir, are no better than waste paper. "It is the indispensible duty of this House to see that "those who are intrusted with the execution of your laws, "do their duty; *that neither the innocent may be condemned "nor the guilty acquitted.* The execution of the law is "so clear, so undoubted, and so public a right, that no "power whatever can dispense with it; and those whose "duty it is to see the law executed, if they either pervert

" the law, or hinder it from taking its course, are highly " criminal, and ought to be brought to a strict account. " Therefore, in my opinion, this matter ought to be " searched into; and if they prove such faults as are com- " plained of, we cannot do less than punish the offenders. " The cry of their unjust dealings is great; and their pu- " nishment ought to be such as their crimes deserve."

Mr Sacheveral followed Mr Booth, and expressed himself in the same indignant manner against the conduct of the Judges of that period:—" If Judges (said he) can " prevent the penalties of the laws, if they can make " laws by their rules of court, I think this government " will soon be subverted: therefore it is high time for this " House to speak with these gentlemen. In former times " Judges have been impeached, and hanged too, for crimes " less than these; and the reason was, because they broke " the King's oath as well as their own. If what has been " said of some of these Judges can be proved, they shall not " want my vote to inflict on them the same chastisement."

Sir Francis Warrington also gave his opinion, and said, " laws made in this House are but dead letters, " unless you can secure the execution of them. We are " come I think to the old times again. In the front of " *Magna Charta* it is said, 'We will defer or deny jus- " tice to no man.' I wonder what these Judges will say " for themselves: If they have not read that law they " ought not to sit upon a bench; and if they have read it, " they deserve to lose their heads. They knew that it " was lawful for the subject to petition for justice, and " to complain when protracted, and their knowledge ag- " gravates their crime."

The result of the enquiry by the Commons, was, that on the 5th January 1681, Chief Justice Scroggs was impeached for high treason, on the following articles: *First*, for making laws, and calling them the laws of the land. *Secondly*, for using unbecoming, violent, and threatening expressions from the chair, to litigants supplicating him

for justice. *Thirdly*, for delaying justice, and inflicting arbitrary imprisonment, and other punishments, on those who exposed such abuses. And, *fourthly*, for employing one "Robert Stevens" to go to printing-houses, and carry off papers and other property, in order that the unjust decisions of the Court might not be made known to the public.

Direful have been the effects resulting to me and to the public at large, from the Commons sleeping at their post, and allowing the Judges of the Court of Session, either to treat Acts of Parliament with ridicule and contempt, or to legislate for themselves. My complaint confirms the correctness of Blackstone's position, that "when the functions "of the Judge are joined with the legislative, the liberty, "and the property of the subject is then in the hands of "arbitrary Judges, whose will is their law, and the rule "of their procedure." The Judges of the Court of Session have not only assumed the right of legislating and of rescinding the statutes of Parliament—but also of prohibiting the subject from humbly petitioning themselves to reconsider their own laws: And this publication will put it to the test, if they also claim the right to punish the injured subject for complaining to his Majesty's Ministers, to the House of Commons, and to the public in general, of the sufferings they have brought upon him by these oppressive and unconstitutional acts.

The following fact I conceive, cannot be too strongly impressed upon his Majesty's Ministers, and the House of Commons, namely, that while every person, be his political opinions what they may, admits that I have been deeply wronged; no man out of Court ever yet said to me, that he believed the Judges would be inclined to retrace their steps, and do me justice. On the contrary, the general opinion is, that if these men can discover any pretext to bear them out, they will dart upon me again with redoubled fury. This, in my opinion, is the worst feature in the whole cause; it clearly establishes, that our

Judges, by their legislative and tyrannical proceedings, have lost the approbation and the confidence of a prudent, enlightened, and discerning people.

I entreat that you will not oppose parliamentary inquiry into the wrongs I complain of. If I fail in the proof, I know the punishment that *justly* awaits me; and if I make out my case, I submit if I am not entitled to redress to the extent of the injury I have suffered.

I have the honour to be,

SIR,

Your most obedient and

Very humble Servant,

JOHN HAY.

York Place, York Lane,
Edinburgh, 2d November 1822.

NARRATIVE OF PROCEDURE

BEFORE THE

Court of Session,

AND

CIRCUMSTANCES CONNECTED THEREWITH.

Influenced by a natural, and I trust not improper regard to my own character—guided in some degree by the urgent and repeated advice, tendered to me by my friends—desirous of putting the public in possession of a case, which has not a local, or individual, but a most general and comprehensive interest—and, above all, compelled to enter upon a public defence, from the treatment I have received, and the injurious expressions *addressed to the public* from the Bench, by Lord President Hope, concerning my conduct in the whole of my procedure—I feel that I have no alternative left but to come forward with a plain, unvarnished, and authentic narrative of facts and circumstances, upon which my justification must finally rest.

In the year 1800, being then a mere boy, by consent of my friends, I engaged with a merchant in Leith, a man strictly honourable in his dealings, and who, in due time, thought proper to recommend me as clerk and outdoor manager to the directors of any extensive shipping establishment in that town. In this situation, my

employers were pleased to confide in, and promote me; and, in the course of four years, my salary was three times advanced. Some time afterwards, having received a few hundred pounds from my father, I commenced business in Leith on my own account, and parted with the Shipping Company on such friendly terms, that, in cases of difficulty, I was generally consulted, for some years after I had left their employment. By incessant toil, unwearied attention, and honest industry, I was, in a few years, successful in realizing a pretty considerable sum, which was, however, unfortunately swept off in 1814, (a year never to be forgotten in Leith), no less than *one hundred and thirty-seven* respectable houses, many of them of old standing, having, in a few months, become insolvent! For my own part, I only escaped from the disaster with the clothes on my back, and a character without stain or reproach; and, soon after, I entered into an engagement with the Perth Baking Company, to act in capacity of manager and cashier for them in Edinburgh. In this situation I remained about three years; and, on parting with that company, I began the baking business on my own account, which I pursued industriously, peaceably, and honestly, till, for an alleged offence, or crime, said to have been committed by me, the Judges of the Court of Session thought proper to tear me from my family, and immure me in a filthy and detestable prison for four months, where I was deprived of the benefit of free air and exercise, and where my health suffered considerably.

Opposed to such an almost overwhelming weight of power as that with which I have the misfortune to contend, it is still no small consolation to reflect, that my averments can be corroborated and authenticated by the evidence of thousands; and that the following certificates of character were not, like too many documents of a similar description, got up to serve a particular present purpose, but were applied for, and obtained some years ago,

at the request of Joseph Hume, Esq. Member of Parliament, in whose hands the originals are at present deposited.

COPY of CERTIFICATES of CHARACTER for Mr JOHN HAY, obtained and forwarded to London in October 1818.

Leith, 19*th October* 1818.

We, the undersigned, merchants in Leith, do hereby certify, that we are personally acquainted with Mr John Hay, who resided many years in this town, and who removed to Edinburgh in consequence of an engagement with the Perth Baking Company. We further certify that he was considered an active man in business, strictly honourable in his principles, a respectable member in society, and a good moral private character.

(Signed) JAMES WYLD.
JAMES FORREST.
CHARLES PHILIP.
JOHN EGGO.
ADAM WHITE.
ROBERT BRUNTON.
ROBERT NEILSON.
JAMES WILSON.
JOHN MENZIES.
GEORGE GIBSON, jun.
GEORGE ARNOTT.
GEORGE CARSTAIRS.

Leith, 20*th October* 1818.

MR JOHN HAY,

DEAR SIR,

Enclosed you have the required certificate, which I hope will answer your purpose. It will always

give me pleasure to hear of the prosperity of yourself, Mrs Hay and family, in which Mrs Robertson sincerely joins.—I remain, dear Sir,

Your's truly,
(Signed) JAMES ROBERTSON.

Leith, 20th October 1818.

That Mr John Hay, lately a residenter in this parish, has been intimately known to me for many years. That from the high respectability of his public and private character, I was induced to recommend him as a proper person to become a member of the kirk-session; and, accordingly, he was admitted to the office, and fulfilled its duties with fidelity and diligence, till an engagement with the Perth Baking Company required him to remove with his family to Edinburgh; and that in the whole of his deportment he was uniformly pious, honest, and industrious, is certified, place and date as above, by

(Signed) JAMES ROBERTSON, Minister.

Leith, 20th October 1818.

We, the undersigned, Elders in South Leith, do corroborate and approve of what the Reverend Dr Robertson has stated, and do certify the same.

(Signed) JAMES WEIR, Elder.
THOMAS BARKER, Elder.
W. GRIEVE, Elder.
ALEX. BURNET, Elder.
ROBERT WEIR, Elder.

Edinburgh, 20th October 1818.

This certifies that Mr John Hay has been a member of Lady Glenorchy's chapel these two years, and has supported in every respect a most excellent character, which is attested by

(Signed) T. S. JONES, Minister.
WILLIAM PATISON, Elder.
JAMES LEA, Elder.

Edinburgh, 20th *October* 1818.

We, the undersigned, hereby certify, that Mr Hay, formerly merchant in Leith, and now manager of the Perth Baking Company, Edinburgh, is well known to us as a man of strict integrity; as a merchant, he is honourable in his dealings; his moral character is unimpeachable; and we esteem him as a very active and useful member of society.

(Signed) THOMAS DICK, Merchant.
A. J. M. WALKER, Merchant.
SAMUEL HALKET, Brewer.
RICHARD ALEXANDER, Merchant.
JOHN STEWART, Merchant.
THOMAS BLACKIE, Merchant.
JOHN LEWIS, Merchant.
JOHN RUTHERFORD, Merchant.
ROBERT MITCHELL, Merchant.
THOMAS CAMPBELL and Co. Brewers.
MUNGO SOMERVILE, Merchant.
JOHN RITCHIE, Merchant.
WILLIAM PATON, Manufacturer.
JAMES ROBERTSON, Ironmonger.
WILLIAM BURTON, Merchant.
JAMES HYDE, Merchant.
WILLIAM RENTON, Merchant.
WILLIAM NIVISON, Bookseller.

Respectable as these certificates of character no doubt are, it is still more cheering to witness the general interest the inhabitants of Edinburgh and Leith are just now taking in my case, after I have been prosecuted and treated like a criminal.

But before proceeding farther in my Narrative, it may occur to the intelligent reader, who is unacquainted with the facts, to enquire, What crime has this man, whose general character is so strongly vouched, and whose honesty, integrity, and moral correctness, have never once been attempted to be impugned or assailed, even by his

persecutors, what crime has he been guilty of to draw down on his head the formidable vengeance of that all-powerful personage, "His Majesty's Advocate for his "Majesty's interest," and a sentence of four months imprisonment in a common jail? Why, the head and front of my offending appears to consist in *the manner* I have complained to judges and others, that property, to which I had acquired a right, had been taken from a family of minors by order of the Court of Session, in virtue of a *private law* of the Judges' own enactment, and in direct violation of a specific and very remarkable Act of Parliament; that also, by a law passed by the Judges themselves, I was prohibited from petitioning that my property might be restored; that the factor *loco tutoris* appointed by the Court, though publicly charged by counsel at the Bar with "GROSS MORAL FRAUD;" and though the words had been taken down at the time, and the fact offered to be proved on the spot, yet he never was called to account by those who had appointed him, or compelled to restore the property which he had got possession of, and intromitted with; that counsel had betrayed their trust; that Lord President Hope had threatened to treat me as a criminal for complaining of counsel, and petitioning for the repeal of the Act of Sederunt 1790, which deprives a subject, in this part of the united empire, of his natural right of stating his own case; that my cause had been hung up in the wind before Lord Succoth, Ordinary, for the brief period of twelve years; that my papers, consisting of the printed pleadings on both sides, had been forcibly carried away from a newspaper office in Edinburgh, to prevent a *final* decision of the Court from being made known to the public; that my agent (Gifford) and my counsel (Mr Thomas Hamilton Miller) had, by their own written admissions in my possession, been carrying on a clandestine correspondence with the Lord President, and had forwarded to him communications injurious to the cause which they had been retained and fee'd to manage faithfully

and honourably; that Mr Miller wrote his clients, as if he had, unknown to them, received instructions from his Lordship as to the mode in which the cause was to be in future conducted; and, lastly, for exposing the errors and misrepresentations in a Report made up by a Court accountant of the name of Russell. Such is a rapid and general outline of the numerous and flagrant offences with which I stand charged. The reader will find the papers on which I was prosecuted at full length in the Appendix, also the Lord Advocate's Petition and Complaint to the Court in December last, on which complaint the Court pronounced the following interlocutor:—

"*Edinburgh*, 12*th December* 1821.

"The Lords of both Divisions of the Court having "convened, and having considered this petition and com- "plaint, they grant warrant for service of the same on the "therein designed John Hay, by serving him personally "with, or leaving for him at his dwelling-place, in terms "of law, a full copy of the said petition and complaint, "and of the appendix thereto, and of this deliverance "thereon: And ordain the said John Hay to compear "personally in Court upon Friday first, the 14th curt. "at ten o'clock forenoon, for examination on the several "matters charged in the said petition and complaint; "and dispense with the reading hereof in the minute- "book.

"C. Hope, *I. P. D.*"

FIRST DAY.

Conformable to a summons served upon me, I appeared at the Bar on the 14th of December, but the Lords in their wisdom had changed their minds, for instead of being examined, I was ordered to lodge answers, as appears from the following interlocutor:—

"*Edinburgh*, 14*th December* 1821.

"The Lords of both Divisions of the Court having

" convened, and having resumed consideration of this " petition and complaint, they ordain Mr John Hay to " lodge answers to the said petition and complaint on or " before the first sederunt day of January next: And " ordain the said John Hay to subscribe the said answers " with his own hand, with certification.

" D. Boyle, *I. P. D.*"

SECOND DAY.

The business of this day commenced by the Clerk reading the following " Note for John Hay, to the Right Honourable the Lord President of the Court of Session."

Edinburgh, 7th January 1822

My Lord President,

Upon perusing the very copious Appendix annexed to the Lord Advocate's complaint, served upon me by order of the Court, it is evident that all the complication and oppression complained of by me, in this much involved and anomalous case, have arisen from the Act of Sederunt, 1730, an act which rescinds the statute of Parliament 1672, made expressly for the protection of the property of minors; and under which Act of Sederunt, my property has not only been abstracted, but my claims for restitution have been hung up by a protracted, and destructive litigation of twelve years before Lord Succoth, without any reasonable prospect of the cause being ever brought to a termination, or the property being ever restored; and it certainly does not mend the matter greatly to say, that I am now, by the King's Advocate, prosecuted as a criminal before your Lordship, for demonstrating that I have been greatly injured by judicial legislation.

On the 24th November, I addressed and boxed a note for your Lordship, as head of the Court, complaining of this grievous abuse, a copy of which note, I now perceive, is in the appendix to the Lord Advocate's complaint, page eighty-one. The Court has already had that paper

under consideration. The following interlocutor was pronounced upon it:—"The Lords having heard this note, "appoint John Hay, the subscriber thereof, to attend "personally at the bar to-morrow, at 10 o'clock, (Nov. "27th) and grant warrant to macers and messengers at "arms to serve the above order on the said John Hay, "without delay. (Signed) "C. Hope, *I. P. D.*"

In obedience to the above interlocutor, of which a copy was served upon me, I attended in Court; and, on the Note being read by the Clerk, I acknowledged the signature, and stated that it was boxed by me, for the consideration of the Court. Your Lordship then made a speech in disapprobation of my conduct, in which you was followed by Lord Succoth, who made some very strong, and very incorrect averments, injurious to my character. I complained to your Lordship, and entreated that you would allow me to reply to Lord Succoth; but your Lordship would not permit me to speak; you said the Court would give me till the day after to-morrow to prepare my defence, when the Court would hear me; but when that day arrived, I was not heard, as your Lordship had promised. I then complained that I was not getting justice, and that the Court ought to hear my defence. Your Lordship, in answer, said, that all the papers had been delivered over to the Lord Advocate, and that I would be prosecuted by that individual.

On the 10th of December, a petition and complaint was, by the Lord Advocate, presented to the Court, charging me with acts of criminality, and praying that the complaint might be served upon "the said John Hay, and ordain "him to appear personally in Court, to be examined on the "facts above set forth; and the same being admitted or "proved, to inflict on him a punishment adequate to his "crime."

On this complaint the Court was pleased to pronounce

an interlocutor, granting warrant of service, "and ordaining the said John Hay to compear personally in "Court, upon Friday first, the 14th current, at ten "o'clock forenoon, *for examination on the several matters "charged in the said petition and complaint*, and dispensing with reading thereof in the minute-book.

(Signed) "C. HOPE, *I. P. D.*"

Conformably to a summons served upon me, containing a copy of the above order of Court, I did attend, when, instead of being examined, I was told to answer the complaint, and affix to the said answer my own signature; and I was further told, that the Court had nothing more to say.

Not being acquainted with judicial procedure, I will not take it upon me to say, that there is any thing irregular, or illegal, in calling a man to the bar of a Court of justice—condescending upon distinct charges against him—refusing to allow him to say one word in his defence—fixing a day when he is to state his defence, then prohibiting him from opening his mouth—and summoning him into Court to be examined at the bar, and then telling him to lodge printed answers *to a criminal complaint*. My Lord, for the following reasons I decline answering that complaint.

First, I am charged by the King's Advocate with having committed a public crime, and before I can be compelled to answer such a charge, the learned Lord must make out his case, and that, too, before a competent Court.

Secondly, The constitution has wisely provided, that no British subject accused of crime, shall be tried by those who have an interest in pronouncing him guilty, or who may be implicated in his defence.

Thirdly, Every British subject charged with a crime, has a right to defend himself, by repelling the charge,

pleading his constitutional privileges, and justifying his conduct under the circumstances in which he was placed, without the fear of implicating his judges, or the dread of being sent to jail, for stating facts in his defence, unpleasant to their ears.

Fourthly, The prosecution is illegal, oppressive, and unjust, if the accused is tried by those who have an interest in the cause, who have expressed opinions hostile to him, who have been informers against him, or who have given evidence to the prosecutor.

Fifthly, There is evidence on the face of the Lord Advocate's complaint, that the Judges of the Court of Session are interested in this cause; that they have expressed opinions unfavourable to the accused; that they are the informers; and that one of them, by his own admission, has been examined as a witness by the prosecutor.

Sixthly, In this country, no judge or judges can compel the accused to criminate himself by his own acts, and were I to answer the Lord Advocate's complaint, I would by that act join issue with him, in an action to be tried before the party, who have the only interest in the conviction. This would be admitting the right, and the competency, of the judges of the Court of Session, to combine in their own persons, the conflicting functions of Complainers, Informers, Witnesses, Jury, and Judges in their own cause.

With regard to what I have written, printed, and addressed to Members of the House of Commons, concerning the wrongs and oppressions I have suffered, the competency of that House to decide upon the propriety of communicating such information to the Representatives of the Nation, is not disputed by me; and the Lord Advocate being a Member of that House, he can there bring forward his complaint, and take the sense of the Commons of Great Britain on the criminality of my conduct, if, indeed, it be criminal to complain, that I have been injured by your Lordship. But I am advised to deny *in*

into the right of the Judges of the Court of Session, to sit in judgment upon what I have communicated to the Members of Parliament, respecting the treatment I have received from these judges themselves.

In respect, &c.

JOHN HAY.

Edinburgh, 17th January 1822.

The above Note being read publicly by the clerk of Court, and Mr John Hay being interrogated whether he desired to have counsel assigned to him as proposed to him by the Court, he declared, that on mature deliberation, he declined the assistance of counsel. And being interrogated whether he acknowledged the above Note, he declared that he acknowledged and adhered to the same, and meant to state no other answer to the petition and complaint than is therein contained: But declares that he declines to sign the present minute. And the Lord Advocate having delivered to the clerk of Court a list of the witnesses to be adduced in support of the petition and complaint, the same was marked by the clerk as relative hereto, and delivered to a macer of Court, that the same may be duly served by him on Mr John Hay.

C. HOPE, *I. P. D.*

Edinburgh, 17th January 1822.

The Lords having considered this petition and complaint, with the note of Mr John Hay relative thereto, declining the jurisdiction of the Court, with the minute of proceedings thereon, they repel the objections to the jurisdiction of the Court, and sustain the said jurisdiction as competent: Allow the Lord Advocate a proof of the facts and circumstances set forth in his petition and complaint, and Mr John Hay a conjunct probation, as accords: Appoint the said proof to be led in their own pre-

sence upon Thursday the 24th current, at ten o'clock: Grant letters of first and second diligence at the instance of both parties, for citing such witnesses as they may adduce; and ordain Mr John Hay to appear personally at the Bar, at the aforesaid day and hour.

C. Hope, *I. P. D.*

THIRD DAY.

Mr Hay stated, that as the complaint against him was at the instance of his Majesty's Advocate, and not at the instance of the Court, he craved to be tried by a Jury,—that he protested against the procedure of the Court, and wished to read his protest, which he held in his hand. The Court refused to allow him to read the protest. The Lord President said, the Court would hear a minute, but not a protest, and Sir Walter Scott, the clerk of Court, politely offered to frame the minute, which offer Mr Hay declined, assuring Sir Walter, that he thought he could frame one himself.

PROOF.

In the petition and complaint, his Majesty's Advocate, for his Majesty's interest, against John Hay, baker, or late baker in Edinburgh, at Edinburgh, the 24th day of January 1822, in presence of the Lords of both Divisions of the Court, compeared his Majesty's Advocate, for his Majesty's interest, who resumed the procedure in this complaint, and stated that a list of the witnesses by whom the several matters contained in the complaint would be proved, had been lodged in process, and duly served on the said John Hay, conform to execution of intimation in process, and produced letters of first and second diligence, at the complainer's instance, against witnesses, with executions of citation, and represented that the last interlocutor of Court had been served upon the said John Hay, ordaining him to appear in Court this day, and craved

that their Lordships would now proceed to the examination of the witnesses.

Also, in pursuance of the interlocutor of Court, and order of service on the said petition and complaint, appeared personally at the Bar the said John Hay.

Thereafter compeared Andrew Jack, printer in Edinburgh, who underwent a long examination in order to prove what had never been denied or concealed, as to his printing papers addressed to Mr Wynne, M. P.—Mr Hume, M. P.—Notes to the Court, and other papers. Mr Jack swore, that the manuscripts were written by Mr Hay—that when printed, the papers were delivered to him, and that he was paid by him. In every respect he swore correctly. The following is the note he delivered to the Clerk:—

Note of articles printed by Andrew Jack and Company, for Mr John Hay, baker, Edinburgh.

1819. Nov. 1. Letter to J. Hume, M. P.—100.
1820. Oct. 17. ——— to C. W. W. Wynne, M. P.—200, with appendix.
Nov. 4. Note to the Court,—A. C. Hay.—200.

ANDW. JACK.

FOURTH DAY.

Mr Hay refused to go to the bar, as no order of Court had been served on him to attend; but he stated he would attend on the mace being presented, which was done. Mr Hay was severely reproved by Lord President Hope, and by Lord Justice Clerk. The President delivered himself with composure and dignity. The same cannot with truth be said of the Lord Justice Clerk. Mr Hay said, that as he had denied the jurisdiction of the Court, he would not obey a verbal message, in case his attendance should be construed into a joining issue with the Lord Advocate, and viewed as acknowledging the legality of the proceedings.

Mr Hay.—My Lord, I hold in my hand a minute, which I wish to read to the Court.

Lord Advocate.—The Court cannot receive any paper from that person; he has already declined the jurisdiction of the Court.

Mr Hay.—It was agreed yesterday that the Court would receive a minute, and the Clerk (Sir Walter Scott) offered to frame it.

Lord Advocate.—It is just one of those disgraceful papers, too many of which the Court has received already from that person.

Mr Hay.—My Lord President, the Lord Advocate must be learned indeed, for he has discovered what is in the minute which I hold in my hand, although he has neither seen nor heard of the contents. I pray the Court to permit me to read it.

Lord President.—Read your minute, Sir.

Mr Hay accordingly read the minute which follows:

MINUTE for JOHN HAY, in the Petition and Complaint at the instance of the LORD ADVOCATE, for the Public interest.

Edinburgh, 24th January 1822.

John Hay stated to the Court, that, by interlocutor of date the 17th current, the Court had repelled his objections to the competency and jurisdiction of the Court to try his case: That witnesses having been cited to prove the complaint, the said John Hay intimated to their Lordships, that he strictly adhered to his declinature as stated in his former printed note, for the reasons therein contained, and other reasons now condescended upon.

First, Because, when men are parties and judges, justice is seldom administered conscientiously; and not unfrequently, the very forms of judicial procedure are totally disregarded: That in support of this position, the said John Hay was refused the liberty of replying to speeches made by the Lord President and Lord Succoth,

containing expressions hurtful to his cause, and injurious to his character; a pledge was given from the Chair that he would be heard in his defence "the day after to-morrow," *but the pledge was never redeemed.*

Secondly, That it is a fundamental principle of the British Constitution, that the legislative and judicial functions shall never be combined in the same individuals: That judges are bound to give effect to laws, not to make them.

Thirdly, That in violation of this incontrovertible principle, the property of the said John Hay has been carried off under authority of laws made by Judges: That by the same laws, he has been prohibited from petitioning that it may be restored: That his endeavours to vindicate his natural and constitutional rights have exposed him to numerous threats and insults; while his papers, together with the printed pleadings on both sides, were forcibly abstracted from a newspaper office in Edinburgh by order of the learned prosecutor; and that, too, for the avowed purpose of *preventing a final judgment* of the Court against him from being made known to the public.

Fourthly, That under such complicated acts of oppression, no law is violated by stating the facts to Members of Parliament, who are legally vested with power to institute inquiry, that justice may be done, both to the accuser and to the accused.

Fifthly, That the same law which has vested in the Lord Advocate a discretionary power to prosecute *for the public interest*, has wisely and humanely secured to the accused *the benefit of a trial by Jury*, who can have no improper object in returning a verdict, and before whom the said John Hay would plead to advantage many facts in his defence, which, if stated to Judges of the Court of Session, would be termed *disrespectful, construed into contempt of Court, and a high aggravation of the alleged crime.*

Sixthly, That while the right and the competency of the Judges to punish for contempts of Court, in the exercise

of their judicial functions, is freely admitted, their right to supersede trial by jury in a criminal prosecution at the instance of the Lord Advocate, *for the public interest, is most unqualifiedly denied.*

Seventhly, That however conscious of innocence, and however confident of an honourable acquittal if tried by a jury of his countrymen, the said John Hay cannot entertain a shadow of hope if judged by those *who are the party who have an interest in pronouncing him guilty, and who have already declared their determination to do so.* And, therefore, the said John Hay desired it to be distinctly understood by the Court, that his personal attendance before their Lordships in this trial is in obedience to their own orders, and that the proceedings shall by him be deemed the same as if he had been absent, because he will cite no witnesses, he will neither ask nor answer any questions, take no interest in the complaint or proof, nor make any defence whatever. JOHN HAY.

Edinburgh, 25th January 1822.

This minute was read in Court by John Hay, baker in Edinburgh, and by him delivered to the clerk of Court.

W. S.

Lord Glenlee.—That minute is a high contempt of this Court. I move that the person at the bar who has read that paper, be sent instantly to jail.

Lord Justice-Clerk.—Although I agree with my brother that the minute now read is a high contempt of the dignity and honour of this Court, and an aggravation of the crime with which that individual is charged, yet to send him to jail from the bar at present, would stop the proceedings of the Court.

Lord Hermand.—That man should be sent from the bar to jail, if he does not instantly withdraw that note, and make an apology.

Mr Hay.—My Lord, I will not withdraw the minute.

Lord Meadowbank.—If the Court conceives the minute a high contempt of its honour and dignity, as it certainly is, the proper method of procedure would be, to send that person to jail every day from the bar, and bring him from jail every morning at ten o'clock.

Lord President.—The note is certainly an insult to the dignity of the Court, and *a high aggravation of the crime with which that unhappy man at the bar stands charged*; yet I question the propriety of sending him to jail during the trial; it might impede him in his defence, *although, I confess, his defence is giving him little trouble.* The minute is still in his own possession lying on the bar, he can avoid the punishment by withdrawing it.

Mr Hay immediately rose, and taking the minute in his hand, passed it to the clerk, and looking to the Lord President, said, "My Lord, I move that the clerk re-"ceive that minute."

Sir Walter Scott.—Mr Hay, I do think you should withdraw that minute, the Court does not wish to receive it.

Mr Hay.—I have, Sir Walter, made up my mind upon the subject, and I will stand the consequences. I insist on the Court receiving what I conceive will be useful to me. The minute was received.

The following interlocutor was framed in Court by the Lord Justice-Clerk, and read by him, to which Mr Hay was requested to attend. His Lordship appeared to be much out of temper, his countenance, and the manner in which he acted on almost every occasion, was by no means pleasant to the accused at the bar; all the other Judges behaved with composure and with dignity.

"*Edinburgh, 25th January* 1822.

"The Lords having taken into consideration the terms "in which the declinature of this Court has this day "been stated in a minute by Mr John Hay, and openly, "and at his desire, read by him in Court, find that they

" amount to a high contempt of the dignity, honour, and " authority of this Court, and justly merit instant punish- " ment by imprisonment. But considering that the said " John Hay is now attending this Court by its order, to " answer to the complaint exhibited against him, at the in- " stance of his Majesty's Advocate, and that his immediate " imprisonment for the offence committed this day in pre- " sence of the Court might possibly impede him in his de- " fence against the above mentioned complaint, they su- " persede the consideration of this matter until the issue of " said complaint. C. Hope, *I. P. D.*"

Signed 26th January 1822.

PROOF Continued.

Edinburgh, 25th January 1822.

Compeared Mr Claud Russell, accountant in Edinburgh, who being solemnly sworn, purged of partial counsel, examined and interrogated, depones, that a remit was made to him in a process before Lord Succoth, depending betwixt William Scott and Alison and John Hay, and this remit was received by the deponent in the end of last summer-session. Depones, that having made a draft of his report, he transmitted the same to the agent for Mr Hay, desiring him to make his remarks on it, and then to transmit it to the agent for the other party. Depones, that on the 19th of November 1821, the deponent received a letter from Mr Hay, dated 17th November, which he now produces, and the same is marked as relative hereto. Depones, that he has received letters from Mr Hay formerly, but never saw him write, and thinks that the body of the letter produced is not of Mr Hay's hand-writing, but that the signature is similar to that of the former letters which he received from him. And Mr Hay being asked if he desired to put any questions to the witness, replied, that he declines to do so, on account of the reasons set forth in the note, and in the

minute which he has given into process. All which is truth, as he shall answer to God.

CLAUD RUSSELL.
C. HAY, *I. P. D.*

For reasons which it is not proper to state here, both parties united in an application to Lord Succoth, that the cause might be sent, *not* to Mr Russell, but to some other accountant. This application, however, Lord Succoth thought proper to refuse. Nay, his Lordship was even pleased to wait on that individual, relative to the cause depending between the factor and myself; a circumstance which, when it became known to my friends and advisers, alarmed them exceedingly. At first sight, this might appear an ungenerous and ill-founded dread. Mr Claud Russell's report at length appeared, in which that gentleman, happily for the factor, contrived to demonstrate, that he was indebted to the minors' estate *less by some hundreds* than he, the factor, *also an accountant*, had admitted to be the fact! and about £2000 less than the pursuer's accountant from the *same statement of intromissions* clearly established. Mr Russell deponed, "that having made a "draft of his report, he transmitted the same to the agent "for Mr Hay, desiring him (Mr Hay) to make his re-"marks upon it." I was not slow in complying with this suggestion, and made my remarks on this precious document, with what truth and justice the reader will discover by referring to my letter to Mr Claud Russell, dated 17th November 1821, which he will find in the appendix to the Lord Advocate's petition and complaint.

FIFTH DAY.

Compeared Alexander Gifford, writer in Edinburgh, who being solemnly sworn, purged of partial counsel, and Mr Hay being asked if he had any objections, declined either to object or not, for the reasons formerly assigned by him; and the said Alexander Gifford being examined

and interrogated, depones, that he knows the said Mr John Hay, and was at one time his agent: That he is acquainted with his hand-writing, and thinks he has seen him write. And being shown the letter marked in the appendix, No. I. dated 1st August 1820, addressed James Weddel, Esq. and signed John Hay, depones, that he believes the same to be the hand-writing of the said John Hay. And being shown the various manuscripts and letters which follow, namely,

Appendix, No. 8. p. 59. letter to Lord Succoth, 18th November 1820;

No. 9. p. 60. Note for Alison Cranstoun and John Hay, 23d November 1820;

No. 10. p. 61. letter to Lord Advocate, 21st November 1820;

No. 11. p. 62. letter to the Reverend Andrew Thomson, 29th November 1820;

No. 12. p. 62. letter to Mr Rolland, 4th August 1821;

No. 14. p. 64. letter to Lord President, 18th September 1821;

No. 16. p. 68. letter to Lord President, 18th September 1821;

No. 18. p. 71. letter to Lord President, 24th September 1821;

No. 20. p. 74. letter to Lord President, 29th September 1821;

No. 21. p. 81. card to Lord President, 17th November 1821;

Deponet, that he believes all and each of those papers which have been successively shown to him, to be of the hand-writing of Mr John Hay, and to bear his signature, when such signature is annexed. And being shown No. 22, page 81 of the appendix, being a note from Alison Cranstoun Hay and John Hay, dated 17th November 1821, deponet, that the body of the note is not of John Hay's hand-writing, and that he is not sure if the signature be of his hand-writing, as it seems to the deponent

rather larger than his common signature. And being shown the letter produced by Claud Russell, and mentioned in his deposition, depones, that the body of the letter is not of Mr Hay's hand-writing, and that he cannot say whether the signature is his or not. And depones further in explanation, that the deponent has repeatedly seen papers of considerable length in Mr Hay's hand-writing, while acting as his agent; but that he has but seldom seen his subscription, and is therefore better acquainted with his general hand-writing than with his mode of signature. Interrogated whether he received any printed communications from Mr Hay while he acted as his agent not of the nature of instructions in the cause? Depones, that before his communication with Mr Hay entirely ceased, there were intervals during which the deponent did not conceive himself as acting as Mr Hay's agent; and that, during these intervals, he received printed papers and other communications from the said Mr Hay, and at other times printed papers were sent to him while acting as agent for Mr Hay; which papers had been boxed by Mr Hay without any communication with his agent or counsel, in consequence of which the deponent gave up Mr Hay's employment. And being shown printed paper, No. III. of the appendix, page 7, depones, it is one of the printed papers which the deponent received from Mr John Hay upon one of the occasions above referred to. And being shown the four numbers of the appendix II. No. 4. of the appendix, depones, these were also received by him in the same manner. And being shown No. VII. of the appendix, page 56, depones, that the same was also received by the deponent upon one or other of these occasions. Depones, that some of these printed papers were sent him under cover, some of them left at the deponent's house, and some of them were, he thinks, delivered to him by Mr Hay himself. Depones, that these papers were communicated to him in the course of the years 1819 and 1820, but previous to the month of November in the

year last mentioned. And the deponent marked all the various printed papers and manuscripts exhibited to him as relative hereto. Interrogated, depones, that the Mr John Hay, to whom his deposition refers, is the same person now at the bar. All which is truth, as he shall answer to God.

ALEX. GIFFORD.

C. HOPE, *I. P. D.*

This individual was my confidential agent. I have been advised to bring his conduct under the review of the Court, it would therefore be improper to state any charge against him here.

The appearance of the next witness in this case excited a strong sensation in Court.

Compeared the Reverend Mr Andrew Thomson, one of the ministers of the gospel for the city of Edinburgh, who being solemnly sworn, examined, purged of partial counsel, and Mr Hay having declined either to admit the witness or state any objections, interrogated, depones, that about a twelve-month ago, he received several printed communications in a note addressed to the deponent from Mr John Hay. And being shown the letter No. XI. page 26, addressed to the Reverend Mr Andrew Thomson, and signed John Hay, dated 30th November 1820, depones, that the same is the note sent to him with the printed communications, as above deponed to. And being shown the printed paper, appendix No. V. page 21, addressed to the Right Honourable Charles Hope, dated Edinburgh, 3d November 1820, and signed John Hay. And being shown the printed paper marked as relative hereto, entitled, a letter Charles William Wynne, Esq. dated 6th November 1820, and note for Alison Cranstoun Hay and John Hay, dated 8th November 1820, appendix No. VII. depones, these several printed papers successively shown to the deponent, and marked as relative hereto, were inclosed with the letter addressed to the de-

ponent by John Hay, as above deponed to. Deponent that he does not remember in what manner this packet was forwarded to him; and that the deponent did not, at the time, know that there was such an individual existing as Mr John Hay. And Mr Hay being asked by the Court if he had any questions to put, declined to do so for the reasons already assigned by him. All which is truth, as he shall answer to God.

ANDREW THOMSON.

C. HOPE, *I. P. D.*

The Reverend Divine being a public writer, the papers were sent to him confidentially, in hopes that he would, with prudence, draw the attention of the public to the frauds practised upon the property of the orphan and the fatherless. (See my letter to him in the Appendix.)

When I addressed the note inclosing the printed papers named in the above deposition to the reverend gentleman, a particular friend, who seemed to know his character well, predicted what use he would make of them. I confess I regarded his prediction as the result of personal dislike, or some other cause unknown to me, and treated it as involving a libel on the Christianity of the Reverend Divine. But mark the error of *my* reckoning. The Reverend Divine did *not* see it to be his duty, if he disliked the tenor of my written and printed communications, to consign them to the flames, or return them to their original author; but, on the contrary, he saw it to be *his duty* to hand them over to a third party.

SIXTH DAY.

Compeared Matthew Ross, Esquire, Dean of the Faculty of Advocates, who being solemnly sworn, purged of partial counsel, and Mr Hay having declined to object to the witness, or otherwise, Mr Dean of Faculty interrogated, depones, that some time about the beginning of the last winter, the deponent received a letter signed John Hay, and addressed to the deponent as Dean of Faculty,

accompanying or containing certain inclosures. Depones, that the purport of the letter, according to the deponent's recollection, was to request the deponent to lay the same, with the inclosures, before the Faculty of Advocates. Depones, that determining not to comply with this request, the deponent returned the inclosures to Mr John Hay, by his clerk, Peter Deas, desiring Mr Deas to inform John Hay, that the deponent declined to lay the papers before the Faculty. Depones, that he had for a time the impression that he had returned Mr Hay's letter with the inclosures which accompanied it; but he now believes he had retained the letter; but depones, that the letter has not been in the deponent's possession for *a fortnight, or nearly so*. Depones, that either the deponent, or his clerk, by his directions, made a note of the inclosure so returned to Mr John Hay. And a note being exhibited to him, and marked as relative hereto, depones, that the same is in the hand-writing of his clerk, and is marked with the deponent's initials; and the deponent believes it to be the same which was made by his direction before the papers were returned to Mr Hay, as above deponed to. Depones, that he has no acquaintance with Mr Hay, nor does he remember having seen him. And Mr Hay being asked if he had any questions to put to this witness, made the same answer as formerly. All which is truth, as the deponent shall answer to God.

MAT. REES.

C. HOPE, *I. P. D.*

NOTE REFERRED TO.

The papers referred to in the letter from Mr Hay, 30th November 1820, were, 1st, Note for Alison Cranstoun Hay and John Hay, dated 8th November 1820; 2d, Letter addressed to Joseph Hume, Esq. M. P. unsigned, dated Perth Baking Company's Office, Edinburgh; 3d, Letter to Charles William Watkins Wynne,

Esq. M. P. dated York Place, Edinburgh, 6th November 1820, signed John Hay, with an appendix, also signed by Mr Hay, dated 3d November 1820, addressed to the Lord President.

The letter and papers received 30th November, and the papers returned to Mr Hay 1st December, with a note declining to lay them before the Faculty.

M. R.

Edinburgh, 26th January 1822.

Compeared Peter Deas, writer in Edinburgh, who being solemnly sworn, purged of partial counsel, and Mr Hay declining to state whether he had any objections, the witness examined, depones, that he is clerk to the Dean of Faculty, and that about December 1820, he received from the Dean a letter addressed to the Dean, and signed by John Hay, accompanying two inclosures. And being shown an envelope, addressed Matthew Ross, Esq. on which is the marking John Hay, received 30th November 1820, depones, the said marking is in the handwriting of the deponent, and was made by the Dean's order, and the same was made the day after the letter was received; and that the said envelope is the cover in which the letter and inclosures were sent to the Dean of Faculty. Depones, that by the Dean's direction, he made a note of the said inclosures, and thereafter delivered the inclosures to the said John Hay. And being shown a note of papers marked on the said envelope, depones, that it is the note made out by the deponent as above mentioned, and marks it as relative hereto. Depones, that the deponent carried these papers to Mr Hay's shop, and delivered them into Mr Hay's own hands, saying, that he was directed by the Dean of Faculty to do so. Depones, that John Hay answered "very well," which was all that passed between them on the occasion. Depones, that Mr John Hay expressed no surprise, but seemed to be aware of the nature of the transaction; and depones,

that the said John Hay is the person now at the bar. And Mr Hay being asked if he had any questions to put to the witness, declines answering, for reasons formerly alleged. All which is truth, as the deponent shall answer to God.

PETER DEAS.

C. HOPE, *I. P. D.*

The Dean of Faculty was applied to by me professionally, because none of the faculty would sign a complaint against the counsel whose conduct I conceived ought to have been brought under review of the Court. It will be particularly observed, that he gives evidence on papers *not in his possession*, nor in the possession of the prosecutor; while the letter written by me explanatory of my reason for transmitting to the Dean certain printed papers, was not produced in Court, although it was in the hands of the public prosecutor. The Lord Advocate must not allege, that this statement is inaccurate. I refer him to Mr Sheriff Duff, to the Crown Agent Mr Rolland, and to the following extract from my deposition before the Sheriff, page 14:—"And being shown a letter dated "York Lane, Edinburgh, 30th November 1820, signed "John Hay, and addressed to Matthew Ross, Esq. "Dean of Faculty of Advocates, and interrogated if he "sent said letter to the Dean, declines answering the "question; and the said letter is now marked by the "Sheriff and clerk with their initials." I submit, that it is on this letter, which is in the hands of the public prosecutor, that the Dean ought to have been examined. He was, however, examined on papers the Court never saw, and which the prosecutor could not produce. But any thing will pass for legal evidence in a Court where the Judges have an interest in the action.

The next witness examined was the Lord President's clerk.

Compeared James Weddel, writer in Edinburgh, who being solemnly sworn, purged of partial counsel, and Mr

Hay having declined to state whether he had objections to this witness, examined, deponed, that he is clerk to the Lord President, and that, in harvest 1820, he received a written letter, signed John Hay, addressed to the deponent. Depones, that he never had any other letter from Mr Hay, so far as he recollects, except that deponed to. And being shown the letter, No. I. of the appendix, dated 1st August 1820, deponed, that the same is the letter he so received. Depones, that some time thereafter, Mr Hay, the person now at the Bar, accosted him in York Place, and asked the deponent if he had any communication to make to him, John Hay, from the Lord President, in consequence of the letter which he, John Hay, had sent to the deponent. From which the deponent inferred, that it was the same John Hay, now at the Bar, who had sent the letter deponed to. Interrogated, depones, that the letter accompanied printed papers, containing reflections on the Court; but he does not remember the particular import or titles of them. Depones, that in his capacity of clerk to the Lord President, and, as he thinks, on the 24th November, he found a note in the Lord President's box, along with the copy of a letter, addressed to Mr Claud Russell. And being shown the written note, No. XXII. of the appendix, page 81, and also the copy of the letter to Mr Russell, dated 17th November 1821, and printed No. XXIII. of the appendix, page 87, depones, that these are the papers found in the Lord President's box as above deponed to. Depones, that he put them to the roll on the 27th and 28th November, and on 30th November they were again in the roll when they were remitted to the Lord Advocate. And being now shown No. 1, 2, 3, and 4, of appendix to No. IV. of the general appendix, depones, that he cannot say whether these are the identical printed papers which were inclosed in the letter addressed to the deponent as above mentioned, but that they are of similar import. And being shown a printed letter to Joseph Hume, Esq. No. III. of the general

appendix, deponed, that he is more certain that the same was one of the printed papers so inclosed, and that he has no doubt on the subject. And being shown a written copy of a letter addressed to Charles William Wynne, Esq. M. P. deponed, that a letter of the same tenor with that now shown to him made a part of the inclosure sent to the deponent by Mr Hay, and is referred to in the letter to the deponent by which the same was accompanied. Deponed, that he sent all these papers to the Lord President in the same state in which he received them. All which is truth, as the deponent shall answer to God; and the said John Hay declined asking any questions at the witness on account of the reasons already alleged. All which is truth, as the deponent shall answer to God.

JAS. WEDDEL.

C. HOPE, *J. P. D.*

Lord President.—Mr Hay, have you any questions to put to this witness?

Mr Hay.—I have no questions to put on my own account, for the reasons already assigned in my note and minute, but out of humanity to Mr Weddel, I wish him to consider well what he has sworn to. He declares, on his oath, without reservation, that he never received any letter from me but the one he has been examined to. Now the evidence to the contrary, in my possession, is so complete, that I wish he could get off on the score of defect of memory, or some thing of that sort.

Lord President.—That will be for Mr Weddel to consider.

Mr Weddel.—I meant as far as I recollected.

Mr Hay.—But you have sworn unqualifiedly that you never did receive any other letter from me. Now, that is not the fact. However, you can now say, as far as you recollect. These words were accordingly interlined by the clerk.

This witness made a most miserable figure on his examination. He incessantly referred for corroboration to

the Judges on the Bench, and repeatedly reminded them and his master, the Lord President, that he had sent the papers about which he was examined to his Lordship, and that they, the Judges, knew the matter better than him, although they were vexing him with questions.

Compeared Archibald Scott, Procurator-Fiscal of the county of Edinburgh, who being solemnly sworn, purged of partial counsel, and Mr Hay having declined to state whether he had any objections to the witness, examined, depones, that he knows the said John Hay, and has seen him write and sign his name repeatedly. And being shown the signature John Hay, adhibited to No. XXII. of the general appendix, depones, he has no doubt it is the genuine signature of the said John Hay, now at the bar. And being shown the letter produced by Mr Claud Russell, a preceding witness, and referred to in his deposition, depones, that the subscription to the same appears in like manner to be the genuine signature of the said John Hay. And being shown the letter to Adam Rolland, Esq. marked No. XII. of the appendix, page 62, depones, that the body of the letter appears to the deponent to be holograph of Mr John Hay, and that the name attached to it seems to be his genuine signature. And being farther shown the letter addressed to the Lord President, No. XX. of appendix, depones, that the body of the same is also holograph of John Hay, and that it is subscribed by him to the best of the deponent's judgment. Depones, that the said John Hay referred to is the person now at the bar. Interrogated, depones, that he has no doubt in his own mind that the writings and signatures above deponed to are those of Mr John Hay; but that the deponent cannot express himself more positively, not having seen Mr Hay actually write or sign the said papers. All which is truth, as he shall answer to God. Mr John Hay declined interrogating the said witness.

ARCHD. SCOTT.

C. HOPE, *I. P. D.*

This is the same worthy and honourable individual whom Lord Advocate Rae, then Sheriff of Edinburgh, employed to carry off from the Star Newspaper-Office, my papers, and the printed pleadings on both sides, for the purpose, as it should seem, of preventing a *final* judgment of the Court in my cause from being made known to the public, because, forsooth, the Judges it was thought were ashamed of it. I forbear to comment on this unjust and oppressive act, but I may be permitted to advert to a notorious fact, that Scrogg's, Chief Justice of the Court of King's Bench, was impeached by the Commons of England in 1681, for having employed a person called Stevens, to commit a similar outrage.

Compeared Thomas Hamilton Miller, Esq. advocate, who being solemnly sworn and purged of partial counsel and Mr John Hay having declined to state whether he had any objections to this witness, examined, depones, that he was at one time counsel for John Hay now at the bar. Interrogated if he received at any time any communication, not of a confidential nature, as relating to the management of the cause before the Court? depones, that he did, and such communications were not only not made to him confidentially, or as instructions in the cause, but on the contrary, were made to him by Mr Hay, directly in breach of a special stipulation which the deponent had made, that he would only undertake the case on condition that all communication betwixt him and his client should take place through the medium of Mr Gifford, the agent for Mr Hay: That notwithstanding this stipulation, Mr Hay did transmit to the deponent a variety of printed papers, which he announced with a letter accompanying them, and which he announced it was his intention to publish. Depones, that amongst these papers was a letter to the Lord President, and *he also thinks*, a letter to Mr Wynne, M. P. and an extract or copy of the Act of Sederunt 1730, relating to judicial factors. Depones, that in consequence of this proceeding on the part of Mr Hay,

the deponent, on the 26th August 1818, as he observes from a note in his consultation book, returned the papers and fee, and declined taking further concern in the cause. Depones, that he believes the said printed papers sent him by Mr Hay are still in his possession, and, if so, he will transmit them to the clerk, but begs they may be returned to him. And being shown a letter addressed to Mr Joseph Hume, No. III. appendix, depones, that the same is marked with his initials, and that, to the best of his recollection, the same is one of the letters sent to him by Mr Hay. And being shown the four numbers of the special appendix attached to No. IV. of the general appendix, depones, that the same appears to be copies of the letters sent to him; and that upon looking at them, the deponent is enabled to say, that he was mistaken in supposing that an extract or copy of the Act of Sederunt 1730 made any part of the papers so sent, for that he now remembers, that what was inaccurately described by him as copy of the said act, was, in fact, a petition for the recal of the Act of Sederunt 1789, and that the mistake arose from the frequent mention of the Act of Sederunt 1730 in the course of the cause. * And being shown No. V. of the appendix, being the letter to Lord President, 3d November 1820, depones, that he received papers from Mr John Hay at different times, and that he has no doubt the document so shown to him was received by him at one time or other, though the deponent cannot remember the exact time; and this doubt applies also to the papers formerly shown to him. Depones, that the deponent delivered up to the Sheriff, as he thinks, copies of all or more of the documents above mentioned, and that an inventory thereof was made out by the deponent's clerk, to which the deponent's impression is, that a receipt was annexed

* It was at this stage of the examination Mr Hay complained of that witness, on examining these papers, he turned round to the Crown Lawyers and consulted with them.

for the said documents by one of the clerks in the Sheriff's office, and that the deponent will search for the receipt, and transmit the same to the clerk of the process. And being shown the letter to Mr Wynne, M. P., No. VI. of the general appendix, depones, that the deponent at one time or other received either the document now exhibited, or a copy of it, from Mr John Hay. And being shown No. VII. of appendix, being note for Alison Cranstoun Hay and John Hay, dated 8th November 1820, depones, that he distinctly recollects having at one time or other received from Mr Hay, either that document or a copy of it. Depones, that never having seen Mr Hay but once before, and never having seen him write, he has no other reason for supposing that these papers were actually sent to him by Mr Hay, excepting that the letter transmitting them bore the signature John Hay; and the address, when they were under blank covers, corresponded with the hand-writing of the letters which bore that signature; and further, that they referred to his affairs, and that the signature corresponded with the subscription of John Hay, to a letter addressed to the deponent, signed by the said John Hay and the other pursuers in the cause, which the deponent believes to be genuine, and which the deponent will search for, and transmit to the clerk of process. All which is truth, as he shall answer to God. Mr Hay declined to interrogate this witness, for the reasons formerly assigned by him. And the deponent declares, that the above deposition is truth, as he shall answer to God.

THOMAS H. MILLER.
C. HOPE, *I. P. D.*

During the time Mr Miller was under examination, Mr Hay rose and said, my Lord, common decency is not observed in this procedure. I cannot shut my eyes and ears. I must take notice of what I see and hear, that in another place it may not be denied. Here is a witness

turning his back on the Court, and examining papers with the prosecutors (this was the fact at the moment I noticed it,) in order that he may concoct evidence with them. The truth is, he has sworn to what is not true. He has got into a scrape, and cannot go on.

The Lord President reproved Mr Hay for the manner in which he had expressed himself. Mr Hay maintained, that he was accurate in point of fact. The truth is, Mr Miller had sworn, that he gave up Mr Hay's employment in consequence of receiving certain printed papers, which, however, were not in being at the time when Mr Miller resigned, nor for *more than two years afterwards*. The moment he looked at the dates of the printed documents, he saw that he had grievously committed himself, and immediately applied to some of the Advocate Deputes, for the purpose of refreshing his memory relative to *facts* and *dates*. Such an application, on the part of a witness undergoing an examination upon oath, appeared to be as novel as it was disgraceful; and surely a counsel practising at the Scottish bar, *ought* to have known, that such conduct was not more repugnant to propriety and good sense, than to every rule of judicial evidence. The Court, however, decided that all was perfectly correct, and the *Lord Justice-Clerk* dictated the following minute.

MINUTE OF COURT.

"After the deposition was closed, Lord Justice-Clerk stated, that, in consequence of Mr Hay having complained in the course of the examination of this witness, that the witness had turned round to the counsel assisting in the prosecution, and had asked for some information relative to the date of one of the documents about which he was deponing, for the purpose of assisting him in giving his evidence; the witness had immediately stated to the Court, that he only had been led to say to the counsel for the prosecution, that there was some mistake, from observing that the document exhibited bore date in 1820, as his

note, to which he referred, bore date in 1818. The Court, upon hearing what is stated by the Lord Justice-Clerk, and from what they themselves observed and heard, are perfectly satisfied that Mr Miller was not guilty of the smallest impropriety or irregularity.

C. HOPE, *I. P. D.*"

Mr Hay was then requested to pay attention to the deliverance of the Court.

Mr Hay.—I have no doubt heard what *the Lord Justice-Clerk* has ordered to be taken down, but *the fact is as I have stated.* The witness has sworn that he renounced my employment in August 1818, because I had sent him a variety of printed papers. Now, *that is not true.* He has also sworn, that among these printed papers there was a printed letter to Mr Wynne,* sent to him on the 26th of August 1818; whereas the letter to Mr Wynne was not printed till *two years* afterwards. He has sworn, that in August 1818, he received a letter along with papers, intimating my intention to publish them; *that is not true.* Mr Miller *has, upon oath, assigned reasons for renouncing my employment which are not true,* and he now finds he has done wrong; *that* was the reason for turning his back on the Court, and applying to the prosecutor.

On the 16th of September 1820, I received Gifford's account, containing charges for Mr Miller's trouble, and his own, in making certain private communications to the Lord President; and as neither Gifford nor Mr Miller would give me any explanation, I resolved to make the matter public, and gave intimation to that effect in a letter I sent to Mr Miller. In October 1820, I also at that time sent, for his perusal, various printed papers, *which, like Gifford, he very kindly handed over to the Sheriff, appearing also as a witness against his own client!* Now, when examined in support of the prosecution against me,

* The words, "*he also thinks*," were interlined, and put down afterwards by the clerk.

at the instance of the Lord Advocate, he attempted to establish upon oath, that these printed papers were put in his possession in August 1818, whereas, in point of fact, they were not transmitted him till October 1820. I would recommend to Mr Miller to make himself speedily acquainted with the facts of the case, in all their bearings, lest in the course of things, the whole matter should come before a higher tribunal; for, if *he broke down* in his evidence when only examined *on one side*, how will he endure the searching explication of a keen and able cross-examination? I beg that I may be distinctly understood, that on one occasion Mr Miller pled the cause most ably; and, at another time, he wrote an excellent paper; but, unfortunately for himself, he appeared to be advised to disregard his duty to his clients, to betray his trust, and to endeavour, when upon oath, to assign reasons for relinquishing their employment, contrary to the fact.

Advocatus stated, that whilst the letters in appendix No. X. and No. XII., the former being one addressed to the Lord Advocate of Scotland, the latter to Adam Rolland, Esq. agent for the Crown, have been proved to be of the hand-writing of John Hay complained upon, no evidence had been offered of the receipt of these letters: That he was advised, that if the evidence of the public prosecutor, and that of the Crown agent, had been offered *in limine* of the proof, and previous to these officers having heard the depositions of other witnesses, it would have formed no objection to their testimony as touching the receipt of these letters: That they had been here called upon to perform their public official duty, in bringing the circumstances connected with this complaint fairly before the Court. As, however, he was very desirous to avoid the adducing of any testimony to which exception could at all be taken, he had resolved to decline offering the above evidence to the Court, and that Mr Hay would consequently now derive all the advantage that could arise

from there being no evidence given of the receipt of the two letters in question. He now desired to conclude the proof in this case, but in the understanding that the note respecting the dates and expense of printing, referred to in the evidence of Andrew Jack, and promised to be furnished by that witness, as also the productions now promised to be made by Mr Thomas Hamilton Miller, together with certain parts of the record of this Court, as connected with these proceedings, should be held as part of the evidence offered by him in support of this complaint. WM. RAE.

The reader will now perceive, that the Lord Advocate was *successful in proving what never was denied, concealed, or disputed*, namely, that I had repeatedly written to the Lord President, to Lord Succoth, and to the Court, complaining of the treatment I was receiving,—that I had printed letters addressed to Members of Parliament, and that my confidential agent, Mr Gifford, my counsel Mr Miller, and the Reverend Andrew Thomson, had got copies.

Lord President.—Mr Hay, you have now heard that the Lord Advocate has closed his proof, and although you have declined the jurisdiction of the Court, you can retract at any stage of the proceedings, employ counsel, examine witnesses, and prepare your defence; and I sincerely advise you to employ counsel, *the Court will readily assign you any two counsel you chuse.*

Lord Hermand.—I have pressed upon that man the same advice, but he thinks very little of my poor opinion; *he will follow no advice but his own.*

Mr Hay.—I saw enough in the Court yesterday to confirm me in the propriety of adhering to the line of procedure I have adopted. If my minute is *a high contempt of Court*, any defence I could make would be considered by your Lordship *ten times more so.* With the interlocutor pronounced by the Court on my minute

hanging over my head, I conceive I am debarred from making any defence whatever,—and I will make none!

Lord President.—There are (looking round to counsel,) many in this Court who know that a Judge is bound to hear a hundred things which may be unpleasant to him. The Court will judge of your defence.

Mr Hay.—Keeping in view the judgment on the minute, I decline making any defence, and adhere to my former resolution, as expressed in that paper.

30th January 1822.

A Note, of which the following is a copy, was boxed by Mr Hay, for the consideration of the Court.

"NOTE for MR JOHN HAY, to the RIGHT HONOURABLE the LORD PRESIDENT of the COURT of SESSION.

"*Edinburgh, 30th January* 1822.

"MY LORD PRESIDENT,

"On the 13th of September, I addressed a letter to your Lordship, complaining that the Act of Sederunt 1789, was so framed as to screen from punishment or censure members of Court, however much they may injure, defraud, or betray their employers. The day following, I had the honour to receive an answer from your Lordship, contradicting my averments, and intimating that my letter would be laid before the Court.

"In my next communication, I condescended on proof in support of what I had averred; and respecting the Court, I said, 'I am glad your Lordship is to submit this matter to the Court. I have complaints to make against three members of Court, of a most serious nature, and I feel confident the Court will afford me justice, when the obstacles are removed which prevent the facts from being brought under the consideration of the Court,—facts which have been not more ruinous to

" me, than they are injurious to the character of the " Court, and the honour of the country.'

" The right and the competency of the Court to en- " quire into the conduct of its own members is disputed " by no man; and as I still entertain the same opinion " as expressed in my letter to your Lordship, above re- " ferred to, I respectfully entreat your Lordship to move " this Note in Court; and I humbly pray the Court to " ordain the following gentlemen to appear personally " before the Court on Friday (February 1st) first, viz. " Mr John Shanck More, Mr John Hope, Mr Thomas " Hamilton Miller, advocates; Mr James Greig, writer " to the signet, and Mr Alexander Gifford, agent.

In respect, &c.

(Signed) JOHN HAY.

SEVENTH DAY.

Lord President.—Your Lordships have here a Note from the individual at the bar, requesting the Court to produce at this bar certain members of Court. Now I wish you, Mr Hay, to inform the Court, if you are now inclined to plead a defence, and if you wish the individuals named to be produced as of service to your defence.

Mr Hay.—I have several charges to make against these individuals connected with the case before the Court; and before your Lordship can come to a correct judgment, you ought to know the causes which have produced the effects about which you are to judge.

Lord President.—Am I to understand, that on these men being produced, you are to retract and plead a defence?

Mr Hay.—I have certain charges to make against these men, which I will establish if the Court will produce them. Their present appearance is necessary to me in the line of procedure I have adopted.

Lord Justice-Clerk.—That is denying the jurisdiction of this Court, "*Sir*," expressed very indignantly.

Mr Hay.—My Lord President, before I can say one word about a defence, I must inform you, that there are at present certain obstacles which prevent me from making up my mind upon that point. It appears to me, that the Lord Advocate has begun *at the wrong end of his action.* In the correspondence I had with your Lordship in September last, I stated, that I had certain serious charges to make against individual members of the Court, and I prayed that I might be enabled to bring their conduct before the Court. Had the Lord Advocate brought a complaint against me on that point, and compelled me to show cause why I had complained, I would have produced such evidence as would have convinced the Court, that the present action could not be maintained. You are proceeding upon the effects, but you have not enquired into the causes which produced them.

Lord President.—Is the Court to understand that you are now to go on and state a defence?

Mr Hay.—My Lord, I am stating the obstacles which prevent me from forming a line of defence, which I conceive to be useful to me. Will the Court remove these obstacles?

Lord Justice-Clerk.—That is not answering the question which has been put to you, Sir.

Lord Meadowbank.—I understand Mr Hay to say, that there are certain obstacles which prevent him from making a defence. It is the duty of the Court to remove these obstacles.

Lord Justice-Clerk, with great warmth, said, Mr Hay has been asked *twenty times* if he will plead a defence on the Court bringing to the bar the individuals named in the Note, and he will not answer. He has already declined the jurisdiction of the Court, (reading passages from the Note and Minute.) I say the Court cannot hear him

after such distinct declarations that he will make no defence.

Mr Hay.—My Lord President, all that the Lord Justice-Clerk has said and read, *goes for nothing*, the learned Lord *ought to know*, that I can retract, and plead at any stage of the procedure.

Lord President.—Well, then, do you now retract?

Mr Hay.—I cannot plead to advantage unless the Court first allow an enquiry into the causes which have produced the present complaint; and as the Court will not do so, I will not plead a defence. Your Lordship knows, that you did, a short time ago, on that Bench, solemnly declare "on your honour as a gentleman, and your oath of office "as a judge," that you *never did* lay down conditions to Mr Miller, unknown to me, as to how he should manage my cause.

Lord President.—I never did, Sir, I never did.

Mr Hay.—My Lord, I ask your pardon, I did not say you *did*, but I hold a letter from Mr Miller, written by his own hand, (holding up the letter in Court,) declaring that you *did lay down conditions to him.*

Lord President.—I never did any thing of the kind to Mr Miller; I never did, and, what is more, I believe Mr Miller never said so.

Mr Hay.—I did not say Mr Miller said so, but *I say he wrote me so*, and here is his letter. Now, will you call him to the bar, and I will put this letter in his hand, and demand in public Court his reasons for writing me a letter, the contents of which your Lordship so unqualifiedly denies.

Lord Justice-Clerk.—My Lords, this is quite unbearable. Is the Court to be insulted in this manner by such a person? *hold your peace, Sir; sit down, Sir!*

Mr Hay.—(Addressing the Lord President,) your Lordship wrote me, that no counsel at the bar would refuse to sign a complaint against another, if I wished

the conduct of a counsel enquired into. Now, my Lord, I will name two counsel who both refused to sign my complaint against Mr Miller.

Lord Justice-Clerk.—Hold your peace, Sir, if you say one word more, I will order you to be taken from the bar.

His Lordship at that time was quite in a rage, he was beating the bench with his fist, and his face was as red as a Turkey cock. The Court would not produce Mr Miller, or any of the other members mentioned in the note.

COPY MINUTE and INTERLOCUTOR in PETITION and COMPLAINT, the LORD ADVOCATE against JOHN HAY.

"*Edinburgh, 1st February* 1822.

"The said John Hay read publicly, and offered to "lodge in process, a Note, requiring that certain indivi- "duals, members of the College of Justice, should be "ordered to attend at the Bar, to answer to complaints "the said John Hay had to state against their conduct "in that capacity; whereupon the said John Hay was "required by the Court to state whether it was his desire "that the Lords should hold the said Note as a retrac- "tion of his declinature of the Court's jurisdiction, and "a desire to be now heard upon his defence, or whether "the matter of the said note was foreign to the subject "of the present petition and complaint; to which ques- "tion the said John Hay did not return any distinct or "explicit answer, but finally declared, that he adhered to "his declinature of the Court's jurisdiction."

Eodem Die.

"The Lords considering that the said John Hay has "not explicitly stated, that the Note lodged by him re- "lates to the present case, and that he still declines to "enter upon his defence; and considering that the con- "tents of the said Note do not appear to the Court to "bear reference to the present complaint, at the instance

" of his Majesty's Advocate, against the said John Hay, " but to contain grounds of complaint which Mr Hay " states himself to have against individuals mentioned in " the Note, they prohibit the clerk from receiving or " writing upon the same in this process. Continue the " proceedings. (Signed) C. HOPE, *I. P. D.*"

EIGHT DAY.

Saturday, 2d February 1822

Mr Hay.—As this matter is now drawing to a close, I consider it but fair to state, that since both divisions of the Court convened, I have, except in some trifling instances, been treated with civility by all your Lordships, with one solitary exception, and that is the Lord Justice-Clerk. During the whole procedure, and, in particular, yesterday, he has shown an inclination to brow-beat; and his interruptions, and the manner in which he has acted, tended to drive both ideas and words out of my head, and prevented me from treating this Court with that respect, and acting with that composure I would otherwise have done.

Lord President.—I am not aware of any improper interruption by the Lord Justice-Clerk.

Mr Hay.—That is your opinion, my Lord, I have already stated mine. My Lord, in looking over the minute and interlocutor of yesterday, a copy of which has been served upon me, it does not appear to state the fact. I mentioned, as plainly as I could speak it, that the Note was not foreign to the subject before the Court; that in my correspondence referred to in the Note, I say, " I am " glad the Court is to take up the matter, and allow " an enquiry; and that correspondence forms part of " the present action." I also stated, that by granting the prayer of the Note, you would then have before you the causes which produced the consequences upon which you are now judging. How, then, can it be said, that the

Note is unconnected with, or foreign to the proceedings before the Court?

Lord President.—Have you any thing to state in your defence, or do you yet wish to enter upon a defence?

This was a strange question from his Lordship, he spoke as if the cause had still been open, while in fact it was already decided. The Judges having delivered their opinions and votes before coming into Court, and the interlocutor written out, sentencing me to four months imprisonment. Contrary to the established practice of administering British justice, and in direct opposition to a positive Act of Parliament, made since the Revolution, this cause was decided in a private room, with shut doors. Lord President Hope came into Court that morning with an interlocutor in his pocket, of which the following is a copy:—

"*Edinburgh, 2d February* 1822.

"The Lords having resumed consideration of, and "advised the petition and complaint, at the instance of "his Majesty's Advocate, against John Hay, with the "proof and whole procedure, they find the said com- "plaint relevant and proven, with the exception of num- "bers ten and twelve of the appendix, the former being "a letter addressed to the Lord Advocate, and the latter "a letter addressed to Adam Rolland, Esq. Crown Agent; "and having also resumed consideration of the minute "dated 24th January 1822, given in, and read in open "Court by the said John Hay, and the interlocutor "thereon, they farther find the same to be in contempt "of the dignity and authority of the Court, and an ag- "gravation of the offence charged in the said petition and "complaint; and, UPON THE WHOLE MATTER, decern "and ordain, the said John Hay to be imprisoned in "the tolbooth of Canongate of Edinburgh, for the space "of four kalendar months from this date, and thereafter, "until he find security, under a penalty of £300 ster- "ling, acted in the books of this Court, for his good be-

" haviour towards this Court, and the Judges thereof,
" for the period of five years from the date of the secu-
" rity; and grant warrant to the magistrates of Canon-
" gate, and keepers of their tolbooth, to receive and de-
" tain him accordingly; and appoint this interlocutor to
" be entered in the general Sederunt-book.

(Signed) " C. HOPE, *I. P. D.*"

The judgment of the Court was no sooner read, than Lord President Hope ordered me to be taken instantly from the bar to the jail. He had previously delivered a speech, a copy of which he was pleased to transmit to me in jail, which the reader will find in subsequent pages, along with certain correspondence with which I was honoured from the same individual.

After passing many tedious days and lonely nights in a miserable apartment in the Canongate jail, the period of confinement drew to a close, and on the 20th of May, I transmitted the following petition to the Court.

Unto the Right Honourable the Lords of Council and Session, the PETITION of JOHN HAY, presently a Prisoner in the Jail of Canongate;

Humbly sheweth,

That after the petitioner had, by your Lordships orders, attended eight days in Court, your Lordships were pleased to pronounce sentence against the petitioner. (See page 44-45.)

The petitioner has had the misfortune to be pursuer in an action against a Court factor, who has plundered a minor family of their property by FALSEHOOD, FRAUD, and WILFUL IMPOSITION, which the petitioner has repeatedly offered to prove at your Bar. The action has been before your Lordships for TWELVE years. It is still pending before Lord Succoth; and, out of the procedure in that action,

the Lord Advocate has thought proper to frame a complaint.

Since the date of your sentence, the petitioner has been closely confined in the jail of Canongate, without the benefit of fresh air, or any open court to walk in, by which he has suffered greatly in his health. The term of four months expires in a few days; and when completed, the petitioner humbly and respectfully entreats your Lordships to liberate him from this detestable place of confinement, and allow him to be restored to the arms of his young and unprotected family.

The petitioner laments, that under the particular circumstances and manner of procedure in the prosecution and sentence which was inflicted upon him, he cannot find bail. This depends on the opinion and will of others over whom he has no control. The petitioner's friends refuse to interfere in this matter, for the following reasons:—*First*, They say that the petitioner was prosecuted by the Lord Advocate in the name of his Majesty, and *for the public interest*, and charged with *crime*, and therefore he ought to have been tried by a jury, or the trial abandoned.

Secondly, That it stands on record that your Lordships were the complainers: That you first furnished the King's Advocate with materials to constitute his action, and then sat party, jury, and judges in the cause on the accused.

Thirdly, That the Lord Advocate's complaint and appendix quoted writings of the petitioner to different individuals at different periods on various points, extending to nearly one hundred pages of print; and proving *these* to have been written by the petitioner, was *only* proving that which had not been denied; but it was not establishing *crime* or *offence*.

Fourthly, The petitioner's friends say, that, in the sentence pronounced, there is no specific passage or passages condescended upon. On the contrary, he is, by your Lordships condemned "UPON THE WHOLE MATTER," which

implies that the petitioner is condemned "on the whole matter" contained in the one hundred pages of print.

Fifthly, They say, that if the *whole matter* in the petitioner's writings relative to his cause, as quoted by the Lord Advocate, be *criminal*, or a breach of "*good behaviour*," that the petitioner *must first pledge himself to abandon his civil rights*, and on no account whatever *in future* complain of *factor*, *agent*, or *counsel*, otherwise they cannot with safety become his security, if the "*whole matter*" contained in the petitioner's writings be *offensive* and *criminal*.

Sixthly, The petitioner's friends lament that your Lordships declined delivering your opinions *individually* in open Court, otherwise the petitioner might have, from these opinions, been able to discover the offensive paragraphs, and in future he would have been able to avoid them in his pleadings. This is the more to be regretted, as part of the procedure against the accused was carried on in his *absence*, but in the presence of the *public prosecutor*, who attended your *private meetings*, and from them accompanied your Lordships into Court.

These are some of the reasons which the petitioner's friends and relations have assigned to him for declining to interfere in what they term "*an unprecedented case*." They say, that had the petitioner been tried and found guilty by a jury who were not the complainers and party, they would have been bail for him; because, in their opinion, the proceedings would have been *legal and the sentence just*, and he would not have been condemned "*upon* "*the whole matter*," but on some distinct passages in his writings, and such expressions could in future have been carefully and successfully avoided.

The petitioner humbly and respectfully implores your Lordships not to extend the period of his confinement beyond the term of four months, otherwise his business will be destroyed, and his family ruined—the action or actions in Court will be lost, from your Lordships having declin-

ed to appoint agent and counsel to attend his interest *during his* CONFINEMENT—and, at no distant period, the close confinement in this jail will most assuredly terminate his existence.

May it therefore please your Lordships to grant warrant to liberate the petitioner from this jail, and your petitioner will ever pray.

JOHN HAY.

Canongate Jail, 20th May 1822.

On this petition being presented, the following interlocutor was pronounced:—

Edinburgh, 23d May 1822.

"The Lords having considered this petition, appoint "the same to be intimated to his Majesty's Advocate, "and allow his Lordship to give in answers to this peti- "tion, within eight days from this date, if he shall see "cause. (Signed) C. HOPE, *I. P. D.*"

ANSWERS for SIR WILLIAM RAE, of St Catharines, Baronet, his Majesty's Advocate, to the Petition of JOHN HAY, presently a Prisoner in the Jail of Canongate.—1*st June* 1822.

On the 2d of February last, the petitioner was convicted before your Lordships of certain offences, consisting in his having wickedly defamed, calumniated, and libelled several of the Judges of this Supreme Court, and the administration of justice, in relation to the proceedings of the Court in certain depending actions, to which the petitioner was a party, and of contempt of Court. Your Lordships had the power to take cognizance of these offences, and to inflict punishment on the committers of them.

You pronounced a sentence awarding against the petitioner a punishment not more than adequate to the offences he had committed.

The respondent is not aware that the sentence so pronounced can be brought under *review*, or that any consent on his part can have the effect of causing your Lordships to *remit* any part of that sentence, or of the punishment awarded by it.

The sentence, which bore date the 2d February last, "ordained the said John Hay to be imprisoned in the "tolbooth of Canongate of Edinburgh for the space of "four kalendar months from this date, and thereafter "until he find security under the penalty of £300 sterling "acted in the books of this Court, for his good behaviour "towards this Court and the Judges thereof, for the period "of five years." The period of four kalendar months specified in the sentence is now nearly expired. The petitioner has preferred the present application for the purpose of obtaining his liberation without being obliged to find the security required in the sentence, *i. e.* he prays your Lordships to *remit* that part of the sentence obliging him to find security for his good behaviour towards the Court and the Judges thereof for a limited period.

Supposing it to be in the power, and to be the inclination of your Lordships to grant this indulgence, provided sufficient reason is assigned for it, still the petitioner has assigned no sufficient reason.

He says, indeed, that no person will become security for his good behaviour; but if this be considered a sufficient reason for remitting that part of the sentence, no delinquent will in future find security for his good behaviour. The petitioner has stated many reasons which he alleges his friends have assigned for not becoming security for his good behaviour; but the respondent must be permitted to doubt whether the true reason is to be found among them. And if the petitioner's friends are really actuated by the absurd and extravagant considerations set forth in the petition, the respondent can only regret that the petitioner should be so unfortunate as to have such friends. Having

said this much, the respondent declines entering into any discussion as to the merits of the objections alleged to have been stated by the petitioner's friends to becoming security for his good behaviour—it is in their option to become security or not; and if they have any scruples, it is the business of the petitioner, and not of the respondent, to remove those scruples.

The obligation to find security for future good behaviour, is neither novel nor of rare occurrence in sentences pronounced against persons guilty of offences. It forms a very proper part of the sentence in the present case, as a punishment for the past, and more especially as a guarantee against future transgressions. The general tenor of the petition is very far from indicating that such a guarantee was superfluous, or is now unnecessary.

The petitioner states, that his health is impaired by the imprisonment he has already undergone, and that a continuance of imprisonment would terminate his existence. If this statement shall be substantiated by the testimony of medical men, your Lordships will no doubt give relief, probably by liberating the petitioner in the mean time, on his finding security that he will return to prison when his health is restored, unless he has before then found security for his good behaviour in terms of the sentence of 2d February last; but any measure of this kind must proceed, not upon the statement of the petitioner, but on the authenticated report and evidence of medical men.

In respect whereof, &c.

DUN. M'NEILL.

"*Edinburgh, 4th June* 1822.

"The Lords allow the petitioner John Hay to give in "replies to the answers for his Majesty's Advocate, *quam* "*primum*; and appoint this deliverance to be intimated "to Mr Hay by a macer of Court, in common form.

"C. HOPE, *I. P. D.*"

REPLIES for JOHN HAY, presently a Prisoner in the Canongate Tolbooth, to the Answers for his Majesty's Advocate.

In obedience to the above interlocutor, and in order to answer his Majesty's Advocate, and to satisfy your Lordships that the petitioner ought to obtain liberation, he is now under the necessity of stating facts and circumstances no less unpleasant to your Lordships, than painful to the parties implicated, but which, with the petitioner, is not now a matter of choice, but of absolute necessity, and a positive duty he owes to his own character, now so deeply implicated.

The petitioner has had the misfortune to be plundered, cheated, and defrauded, out of considerable property by one of your Lordships' Court factors, a person of the name of William Scott, who petitioned the Court in 1798, to appoint and confirm him in the possession of an estate belonging to a family of minors. Your Lordships were pleased to appoint and confirm the said William Scott in possession of the said property, under the authority of a law made by the Lords of Council and Session, in direct opposition to the conditions contained in the statute of Parliament 1672; which statute was made expressly for the security and protection of the property of the fatherless, and more particularly to prevent them from being injured by their own factors, when entering upon their trust, and during the infancy of the minors. The result of the Court's legislating and appointing this factor to carry off that property under the authority of your law, is, that the minor family have lost their estate to the extent of £10,000 sterling, every shilling of which they would most assuredly have been in possession of, if the Court had not made a law containing regulations directly opposite to those in the statute of Parliament.

But this is not all, nor perhaps the worst part of the petitioner's complaint. He has petitioned your Lordships

for TWELVE long years, praying that you will compel this factor to restore to the proper owners the property he has illegally detained. It is now fourteen years since the youngest of the family became of age; but such has been the procedure in this case, that the petitioner can obtain no relief. He has proved against this said William Scott falsehood upon falsehood, gross moral fraud upon fraud, and wilful imposition practised upon the minor family, of the most disgraceful description. All this has been proved; and all this the petitioner again publicly pledges himself to prove at your Lordships bar, any day your Lordships please to appoint. Yet in the face of all this, Mr John More, and Mr John Hope, both counsel practising at your bar, and both of them then in the employment of the petitioner, did, in a written opinion advise him to give up the cause as hopeless, for, in their opinion, "*however improper the conduct of this factor has been,*" *he would not on that account be even deprived of commission,* for your Lordships were not in the "*practice*" of giving minors the benefit of the conditions contained *even in your own law,* or Act of Sederunt 1730, under which law you confirmed the said William Scott in possession of the said estate. And further, the petitioner has been *ridiculed, insulted, and degraded; torn from his young and unprotected family, and for four months immured in a filthy and detestable jail or dungeon,* for the manner in which he has complained to Members of Parliament and others of the wrongs he has suffered.

Before proceeding further, it is but fair to keep in view the reasons which the Lord President stated to the petitioner, or rather to the public, which, he said, induced the Court to frame the Act of Sederunt 1730, now so much complained of by the petitioner. His Lordship's pleadings or accusations against the petitioner were delivered in Court, the day on which you consigned the petitioner to this jail. That speech commences with the following expressions: "I am afraid, Sir, that your mind

" is so *prejudiced and infatuated* on this subject, that what " I am going to say *will be of little use to you*, but *for* " *the audience here, and through them, for the public at* " *large*, it is proper to explain the nature of the *offence* " *of which you have been found guilty.*" That the Lord President did, in open Court, use the expressions as the petitioner has and shall quote them, cannot be disputed, because his Lordship was pleased to transmit to the petitioner, in this jail, *his own speech, written out by his own hand*, and from that speech so written out, the petitioner shall now quote. " Now, Sir, (No. 1.) in regard to your " wife's family, how stands the fact? Your wife's father " died, leaving a family of infant children. He named " no tutors in his will. Is this Court to be blamed for " that?

" In this situation, I say, (No. 2.) of total helpless- " ness, your wife's mother, with the express consent of " some of her children's nearest relations, applied to this " Court to appoint a factor *loco tutoris* to them. Accord- " ingly the Court did appoint such a factor. And whom " did they appoint? A person of their own choosing? " No; they named, as they always do, if no objection is " stated against him,—they named, I say, the very per- " son recommended by your mother-in-law and the other " relations, and who is thus described in the petition, (I " read the very words of it,) as one " in whom we have " *peculiar* confidence."

" And this man, Sir, (No. 3.) you have been so absurd " as constantly to describe as a creature and favourite of " the Court, and to charge the Court with having seized " on your wife's fortune, by means of a creature of their " own, contrary to law.

" This factor was, of course, (No. 4.) to govern himself, " not by the Act of Parliament 1672, which applies only " to tutors, properly so called, but by the Act of Sede- " runt 1730. And so your wife's relations, and their ad- " visers, must have known, when they applied for his

" appointment, and therefore can have no reason to com-
" plain of that act, with a view to which their application
" to the Court was made.

" The Act of Parliament 1672, is, (No. 5.) in many
" respects, an excellent act, and was passed by our Parlia-
" ment with the most benevolent views. But, unfor-
" tunately, the regulations of it are so strict, and the
" penalties so severe, that the act tended to defeat itself,
" by deterring people (especially those who could not af-
" ford the advice of counsel and agents, to direct them
" through the different forms required by it), from ac-
" cepting of the office of tutor. The consequence was,
" that many children were left without any guardians at
" all, and their relations were under the necessity of ap-
" plying to this Court to appoint factors *loco tutoris*.
" The Court soon found it necessary to lay down certain
" rules for their guidance, and with that view framed the
" Act of Sederunt 1730, *which contains very wise and*
" *salutary regulations*.

" *But, Sir,* (No. 6.) *it must be obvious to every one,*
" *that had the Court made their regulations the same, or*
" *as strict and severe as those of the Act of Parliament*
" 1672, *the consequence would have been also similar,*
" that few persons would have consented to act as factors
" under it, and *thousands of orphans would have been left*
" *totally unprotected.*"—Further on—

" And, Sir, (No. 7.) I may here mention, (what
" ought not a little to stagger you in your opinion of this
" Act of Sederunt 1730,) that while thousands of child-
" ren and their relations have had factors appointed un-
" der it, and derived incalculable benefit from it, *you are*
" *the first person who has called in question either the le-*
" *gality or the wisdom of it.*"

In calling the attention of your Lordships to these paragraphs, let it be remembered, that the charges against the petitioner were stated for the " information of the " audience," and through them to the " public at large."

Now, if the "public at large," have a right to witness the petitioner brought to the bar, and hear him accused of crimes and offences for THEIR INFORMATION, it follows of course, that the same public have also a right to hear the petitioner make a defence—or explain what may appear unreasonable in his conduct; and as your Lordships expressly refused to allow the public to hear a reply, the petitioner humbly submits, that he has a legal and constitutional right to place on record the present pleading, that the same publicity may be given to his defence, which your Lordships deemed necessary to give to the charges you condescended upon against him.

The petitioner has numbered the paragraphs quoted, in order that he may the more distinctly make a reply to each; and in so doing he finds it absolutely necessary to begin at the last paragraph, and take them backwards.

No. 7. If the petitioner is conscious in his own breast that he is correct in his positions, and if his friends are of the same opinion, there is nothing to "stagger" him in being the first who has boldly complained of an abuse under which he has so severely suffered. No abuse could ever be complained of, inquired into, or corrected, if no man took the lead.

Nos. 6 and 5, require to be taken in conjunction; they are both founded upon the hypothesis, that the statute of Parliament 1672 is defective, by being too severe on factors—that minors suffered from this—that Judges have a right to legislate and make laws when they disapprove of Acts of Parliament—that in this instance they mended the constitution, and made an excellent law, under which the property of minors was in future to be intromitted with—a law which contains "very wise and salutary regulations"—and without this law "thousands of orphans would have been left totally unprotected."

The petitioner respectfully entreats your Lordships to keep in view the construction of the British constitution, the object of a Parliament, and the duty of Judges. It

is the pride and the boast of Britons, that they live under a happy constitution, where they are governed by laws NOT MADE BY JUDGES, but by their own representatives in Parliament. It is the British Parliament which has a constitutional right to make laws, or mend those which are made; and your Lordships' duty is, *to give effect to laws, not to make them.* But it seems, that had the Court not legislated in 1730, and mended the Act of Parliament 1672, "thousands of orphans would have been left totally "unprotected." The petitioner submits, if it is not a libel on the British Parliament to aver, that had the Judges of the Court of Session not done an illegal act in 1730, the minors of Scotland would have to this day been "unprotected." Surely it will not be contended, that a British Parliament did not exist in 1730, or that that Parliament refused to exercise its functions. But laying the illegality of your law out of view, the petitioner will be glad to know what protection minors can derive under that act, *if it is true* that you never enforce the conditions, nor inflict the penalties, "*however improper* your factors "conduct themselves." If this is the fact, your law is no check whatever upon factors. Minors would, in so far as regards Court factors, derive the same protection, were your Lordships to appoint and confirm your factors in the possession of their estates, *conformable to the rules, regulations, and conditions, of a circulating library.*

In the paragraph No. 4, "the public at large," are informed, that the factor was not to govern himself "by "the Act of Parliament 1672, but by the Act of Sederunt 1730." If this is not cutting down the statute by a law made by the Judges, the petitioner does not know the meaning of such a term.

Nos. 3, 2, and 1, require to be taken together. The father of the infants died without making a settlement. The Lords of Council and Session are most assuredly not "to blame for that," nor have they ever been, by the petitioner, blamed on that point; but the petitioner has, and

he still blames them for imagining that they had a right to legislate and supply such a defect by a law of their making. This the petitioner unqualifiedly denies, and maintains, that the Act of Sederunt 1730 being in itself unconstitutional, every appointment under it is illegal. The fact, that the relations and mother of the infants did petition, may establish that two country gentlemen and the mother of a minor family did, from ignorance, and under advice of a *member of the Court of Session*, petition the Court to do that which was improper. But such an innocent mistake on their part, never can, to advantage, be brought forward in justification of the Court to do to the minors an illegal action. The property belonged to the minors and not to their relations, and your Lordships were placed on the Bench to give effect to laws, *not to make them*, nor cut down laws already made. The professed good intention on the part of the Court does not remove the legal objection to the Act of Sederunt 1730.

But let it be supposed, that the professed good intention on the part of the Court, and the application of the relations does remove the legal objection, how does it happen that the minor family cannot recover their property, or bring their cause to a termination? Surely their relations are not to be blamed for that. If it is true that this factor has, to his face, in public Court, at your bar, been charged by learned counsel with acts of "gross moral "fraud," and the facts offered to be proved on the spot, surely the relations of the minors will not be blamed for that? If it is the opinion of the bar in general, and of Mr Moncreiff and Mr Hope, in particular, that the petitioner will obtain no redress, however improper the conduct of the said William Scott has been, because your Lordships are not in the "practice" of giving minors the benefit and protection *even of your own Act of Sederunt* 1730; surely neither the relations of the minors, nor the petitioner himself, can justly be blamed for that. Now, if all this is

true, the petitioner submits, if he is not justifiable in describing this factor a favourite of the Court, and one who is above the reach of the law, in the same proportion as the petitioner has *unfortunately* found himself placed below its protection.

The petitioner has, according to his humble abilities, repelled some of the charges Lord President Hope stated in Court, " for the information of the public at large;" and considering what has been said of the *prejudiced* and *infatuated* state of the petitioner's mind, it will not perhaps surprise your Lordships if the petitioner should now presume to attack your Act of Sederunt on its own alleged merits, and defend the Statute of Parliament against the alleged imperfections in it.

The preamble of the Act of Parliament made in 1672, which the petitioner shall just now quote, describes, with an accuracy almost prophetic, the whole evils the minors in Scotland are just now suffering by *judicial legislation*; and every section of that statute demonstrates the collective wisdom, the sound judgment, and parental care of the Prince and of his Parliament, in fencing and protecting the property of these young and tender members of the state, whose welfare and protection is always near and dear to every person who is blessed with manly feeling and an honest heart. " Our Sovereign Lord, considering the " great prejudice and inconvenience befalling to pupils " and others who cannot preside for or defend themselves, " that their tutors or curators having immediate access to " their charter-chests, writs, evidents, and securities of " their lands, sums of money, and others belonging to them " which they may *embezzle, suppress*, or by *collusion give* " *up to their debtors*, or other persons interested, *without* " *justification, or otherwise having got satisfaction*; there " is no means by which a charge can be made up against " the said tutors or curators, but themselves, who, when " they are brought to account, *make up both their own* " *charge and discharge*. For remede whereof, his Ma-

"jesty, with advice of his estates of Parliament, statutes, "ordains and declares," &c.

1st, A correct inventory of the minor's property is directed to be made up by the factor and two of the nearest relations of the children, on the father and mother's side, three duplicates of the same are to be made out and subscribed by them, each relation to retain a copy, and the third copy to be lodged with the clerk of Court, and all countersigned by him, for the purpose, as the act declares, "that they may not be altered thereafter."

2d, When any alteration takes place respecting the estate, by further discovery of debts or funds realized, eiks are to be made to the inventories, and the same subscribed as aforesaid.

3d, No debtor to the estate can be compelled to make payment to the factor, till he produces an inventory so subscribed, and shows that the claim is contained in the inventory, and that the debt, when recovered, shall stand as a debt against him for behoof of the minors.

4th, If any factor fail to make such inventories and eiks as directed in the act, he shall be liable both for "intromissions and omissions," and shall have no allowance or defalcation of the charges and expenses laid out by him in the affairs of the said pupils, in respect, that as he has failed to state to the credit of the minors sums actually received, he shall not be permitted to state to their debit, sums he may have actually disbursed, and shall be removeable from his office as a suspected intromitter.

Now, unfortunately for the minors in Scotland, they are by the Act of Sederunt 1790, totally deprived of the whole protection wisely provided for them by this valuable Act of Parliament, and which their defenceless condition so imperiously requires. The Lords of Council and Session have been pleased to make a law, and under the authority of that rule of Court, the whole property of the minor is intromitted with and carried off by the factor, under the sanction of the Court of Session.

This destructive Act of Sederant declares, that the factor *himself* shall make up an inventory of the effects belonging to minors, and lodge the same in Court, *after being six months in possession of the estate*; of course, the factor makes up his own *own charge and discharge*, which the Act of Parliament 1698 expressly prohibits. But the Act of Sederunt authorizes this method, without enacting that such inventory shall be taken in the presence of persons properly qualified on behalf of the minors, or that it shall be attested by their relations, the clergyman, elders, or any other respectable person, that it was made up in their presence, and that it contains a full and correct statement of the whole property of the deceased.

How easy it is for a factor to draw up, in his own hand-writing, a full and correct inventory in the presence of the relatives of the orphan children; and after carrying off the same, with the whole property and papers, to lodge in Court a very *different one*, and not containing perhaps the one-half of the property. It is quite impossible for the minors, after an interval of ten or twelve years, to say if the paper lodged in Court is the one originally made up or not. They know not to what extent their property may have been plundered, because, as the Act of Parliament expresses it, the factor is permitted and empowered "to make up his own charge and discharge without any attestation whatever."

But this is not the only objection which occurs to the Act of Sederunt 1730. It is brought forward at the appointment of the factor, and it has the melancholy effect of deceiving the relatives of the fatherless children, because that act declares, that the factor is a servant of the Court,—that the single inventory shall be lodged there,—and that he shall account annually to the clerk of Court for his charge and discharge.

Now, as the clause enjoining the factor annually to lodge his accounts, is in many instances totally disregarded, and *never enforced by the Court*, it is quite evident

that the effects to minors must be ruinous in the extreme, and much worse than if no Act of Sederunt had existed on the subject; for had that been the case, the relations would have made regulations among themselves, so as to have been a check upon one another, or the minor would have been protected under the statute. Your Lordships will admit, that the property of minors, at the death of predecessors, is really and truly their own,—that it can only be intromitted with in a legal or in an illegal manner. If in a legal manner, then it must be conformable to some distinct and positive law, and if carried off under that law, the conditions in it are binding on those intromitting. If the conditions in that law are not binding on the factor who intromits, nor on the Judges who appoint that factor, then the property has been carried off under a false pretence, and both the intromitter, and those who empowered him to intromit, are highly culpable, and in justice are bound to make good the loss to the minors. But it is quite evident, that such a loss can never be recovered in the Court of Session, if it is not the "practice" of the Court to give minors the benefit of either statute or sederunt law.

Considering, therefore, the defective construction of the Act of Sederunt 1780—the bringing it forward at the factor's appointment—the effects produced by it upon the relations of the minors—the contempt with which the factor treats it when once appointed—the total inability of minors, when they become of age, to detect frauds or recover property, the existence of which they cannot prove—taking every circumstance into consideration, the ingenuity of man could not have devised a more complete method by which factors *loco tutoris* of the Court of Session become enabled securely to rob, embezzle, and conceal the property of minors unsuspected, undetected, and unpunished, than by this Act of Sederunt.

The petitioner has already said, that he has been plundered out of his property, by the falsehoods, the frauds, and

the wilful imposition of a person who was confirmed by your Lordships in possession of an estate belonging to minors, under that Act of Sederunt 1730, the destructive tendency of which he has already described. It would fill a volume to bring under your Lordships' review what has been stated in the numerous pleadings, &c. drawn by counsel and accountants, during twelve years litigation. It is sufficient to say, that these have had no other effect than that of ruining the petitioner, and convincing him that there is some radical defect in the procedure of the Court, which prevents that cause from ever coming to a termination.

Several years ago, the petitioner was a merchant in Leith, and in 1809, was married to one of the young ladies who had been a minor, and whose property had been intromitted with by the said William Scott. In a few months subsequent, the mother of that minor family died, and when on her death-bed, she called the petitioner to her, and he being the only male relative in whom she could confide, she stated to him the manner in which she had been treated by the said William Scott. That for eleven years he had rendered no account of his intromissions, *and refused to do so*—that she had received nothing but insult from him—that she had reason to *suspect that he was in bankrupt circumstances*, and that her unmarried and *unprovided* daughters would be ruined. She implored the petitioner to take her young family under his protection, and use every means in his power to recover their property for them. The petitioner admits that he did promise to the dying mother that he never would *desert or betray the interest* of the family; that he would use every means in his power to call the factor to account; and as one of the young ladies was his own wife, he did not doubt either his power or his right to do so. Mr John More and Mr John Hope had not, at that time, *assured him that* "however improper Mr Scott had acted," your Lordships would protect him. Indeed, had the

whole Bar *at that time* delivered such an opinion, *so dishonourable to your Lordships*, and *confirmed it upon oath*, the petitioner would not have believed it. Accordingly the petitioner wrote the said William Scott on the 30th June, 1809, as follows:—Sir, as it has pleased God in his "providence to take Mrs Cranstoun to her rest, and as "all her daughters are now of age, it becomes necessary "that a state of their affairs under your charge, be laid "before them. I beg you will be so obliging as drop me "a line by post, saying when it will be convenient for "you to call at the Misses Cranstoun's house, that the "subject may be talked over, and the necessary arrange-"ments made for *adjusting matters in an amicable manner*."

To this very civil and reasonable request, your Lordships' factor thought proper to return a saucy and impertinent answer, charging the petitioner with duplicity, ignorance, and presumption; and refused to attend a meeting, or produce any statement of his intromissions as factor *loco tutoris*, although the family had become all of age, and although he had been eleven years in the uncontrouled possession of their property. His reply needs no comment—it speaks intelligibly enough for itself, and is as follows:—"*Edinburgh*, 1*st July* 1809. To Mr John "Hay, Sir, You might I think have *honestly* enough "adduced a stronger reason for making to me the pro-"posal contained in your letter of yesterday's date, which "I have just now received. The death of Mrs Cranstoun "though an event to be deplored, is an event which, "from her *dependant situation*, can make little or no dif-"ference in the pecuniary arrangements of the family. "*You do not seem to be aware, that for my intromissions as* "*factor* loco tutoris *for Mr Cranstoun's children, it is in* "*my* OPTION to account to them, or to the Court by whose "authority I have acted; but certainly you cannot be "ignorant, that some time ago, I *of my own accord, advis-*"*ed the family, in order to save the expense* of an appli-"cation to the Court of Session, to choose a person qua-

" lifial to examine and pass my accounts, preparatory to " a division of the funds."

Now the petitioner, with humility, asks your Lordships if you can perceive any want of courtesy, or any inclination to produce a law-suit, in his letter to this factor; while, on the contrary, the said factor, in the very commencement of his letter, insinuates a want of *honesty* in the petitioner. You will also perceive that Mrs Cranstoun is said to be *dependant* on her family; of course she had no concern with the property. And the petitioner freely confesses that he did not know, *until your Lordships' factor thought proper to inform him*, that it was in his *option* to account to the family, *or not, just as he pleased*. He had never made up tutorial inventories when he entered upon his office, nor lodged annual accounts, conformably to your Lordships' act; and in this situation you are informed, that of *his own accord*, he advised a few young ladies, unacquainted with business, and certainly not well informed in law, to choose a person properly qualified, to audit, examine, and pass his accounts *for eleven years*, which had never been seen. He says *he advised them to this, to save the expense* of an application to your Lordships. What he means by this application, the petitioner does not know, *unless it be the expense of this twelve years litigation*; for this Court factor ought to have known, that he had given bond to your Lordships, along with two securities, that he would faithfully account for the property, and that each year he would produce a full statement of his intromissions, " that all concerned might, *without ex-* " *pense*, see, examine, and provide themselves with the " means of checking the same."

It will be also necessary for your Lordships to keep in view, that when Mr Scott advised that family of young ladies to that irregular procedure, he was on *the verge of bankruptcy*; and the man he recommended to pass these accounts which could not be seen, was a Mr John Black, his own *cousin, and cautioner in the Court for his*

intromissions. Now, although the petitioner did not doubt the ability of Mr Black to make good any deficiency of funds, nor his liability to do so; yet surely the petitioner may be permitted to doubt how far Mr Black was of *all men most qualified* to examine these secret accounts, and report to the family how much he would have to pay them, in consequence of the *factor's insolvency.*

At that period, the petitioner knew little about the Act of Parliament 1672, or your Lordships' Act of Sederunt 1730. But he argued the matter on the principles of common sense and mercantile practice, for, in a second letter to your Lordships' factor, the petitioner said, "Your not "having furnished the family with an account of disburse- "ments for ten or eleven years, nor a state of their funds, "or how these are applied, and your advising the family, "'*of your own accord,*' as you express it, to pass your ac- "counts, *without having seen them,* is, I confess, a novel- "ty, and leaves much room for conjecture. You are a "man of business, and no doubt sensible, that when pro- "perty is put under the management of an agent or fac- "tor, it is necessary that they hand their constituents a "state of their affairs from time to time, and I am at a "loss to find a reason for your declining to give a few "fatherless ladies what a man of business would *demand* "*as his indispensable right.*"

But such arguments as these, not to mention the positive conditions in your Act of Sederunt, were lost upon the factor. He refused to produce his accounts, or lodge them with the clerk of Court, until a complaint against him was presented to your Lordships in 1809. Certain statements, said to be his intromissions, were then produced, and strange as it may appear, *it is no less true,* that they are docqueted by the cautioner, who certifies, that "he had carefully compared the accounts and state- "ments with the vouchers, and that he found the said "accounts, &c. correct, and sufficiently vouched." In

these accounts the factor had taken credit for £300, said to have been lent out per bill and bond on Dr Erskine, David Morison, and Joseph Gillan, but on investigation, the complainers found that neither bill or bond existed, *or ever had been in the factor's hands.* Notwithstanding of this, he produced his cautioner's certificate at the bar of your Lordships, certifying that the accounts "had "been carefully compared with the vouchers, and even "found sufficiently vouched." And here it may be observed, that although he advised the family to such a procedure, under pretence of saving expense, he actually charged 100 guineas for his trouble in explaining his own statements to his own cautioner, independent of several hundred pounds charged in the name of commission.

The falsehoods which the complainer detected in the factor's pleading are marked and conspicuous, regarding a farm in which the interest of the minor family depended on the nature of the possession. The factor has repeatedly informed your Lordships, that he and the other co-tenants did not occupy that farm *in equal shares* as a grazing farm for their young cattle, but that they held it in unequal shares, not in their own right, but in the right of a preceding bankrupt tenant. *A more wilful and deliberate falsehood than this never was uttered!* By mere accident the complainers discovered a statement exhibiting the operations on the farm for several years, in which all the tenants pay equally and receive equally; and this statement is written by the factor himself, and is signed in presence of witnesses. The factor assured your Lordships, that the new tenants were not occupying the farm in their own right as co-tenants, but as trustees or creditors of the preceding tenant, and that the lease of the bankrupt had never been rendered void. This is a falsehood almost as glaring as the other, for the petitioner was at last successful in discovering a regular extracted decree of removing executed against the bankrupt tenant, by which his right and title to the farm ceased for ever. It certainly will be

extremely difficult for this factor to convince your Lordships that he was ignorant that such a document existed, or that it had not produced such a legal effect; for although the factor informed your Lordships that no such document existed, the petitioner *found it in the heart of an old process*, which this factor had with one of the co-tenants before the Sheriff of Roxburghshire; and in that process he maintained that the lease had been rendered void, and produced the extracted decree in support of his averment.

At the time the father of the minors died, a Mr George Bell, a neighbouring farmer, was due to the minor family about £500, £300 of which was constituted by a bond, and the remainder by bills for farm stock which Mr Bell had purchased at the displenishing of one of Mr Cranstoun's farms. The factor, instead of recovering this sum from Mr Bell for behoof of the minor family, allowed a great part of it to be extinguished by contra claims which Bell exhibited against the factor himself in some of his farming speculations. When the petitioner charged him with this, he, as usual, stated a deliberate falsehood, and informed your Lordships, that "the defender never did "allow Bell to compensate one shilling of the debt due "to the minors by any other claim." And by way of a silencer, he adds, "it will be judged with what face they "came before your Lordships with an assertion which "they know to be contrary to the fact." But the fact is, and your Lordships' factor knew it well, that notwithstanding this unqualified denial, he did allow a large sum due by Bell to be extinguished by contra claims, charged by Bell against the factor himself—that an account-current was made up betwixt them, and signed by each, in the presence of witnesses—that one copy is in the hands of Mr Wood, and another in the hands of Mr Rutherford, writers in Jedburgh. "It will, therefore, be judged with "what face" the factor made such a statement to your Lordships, "knowing it to be false." On this point, and that relating to the farm, the minor family lost about

£1000, and the petitioner implores your Lordships to order your factor to the bar, that in open Court the petitioner may prove the truth of the averments he has now made.

From what has been stated, perhaps it may be necessary to explain the connexion which exists between this individual and the minor family. He is the son of an only sister of the father of the minors. His mother was married to a dissenting clergyman in Musselburgh, of the name of Scott, who died, leaving her a widow with six young children in the most indigent circumstances. Her brother, the father of the minors, was an opulent and extensive farmer, and accordingly he transmitted to her *various sums of money* during the time she remained in Musselburgh. She afterwards removed to Kelso; and, under the patronage and support of her brother, she, in company with her eldest daughter, commenced business in the haberdashery and millinery line. In this, however, she was not successful; and the father of the minors, and one of his uncles, lent her *various sums of money* to pay off her merchants, and get out of business in a creditable manner. For several years her family and herself were supported by the bounty of Mr Cranstoun; and when her son Mr Scott, the present factor, commenced business in Edinburgh, in company with Mr Sanderson, the father of the minors lent him £200 sterling. Not to mention that the expense of the education of another brother, a clergyman, had also been laid out by the same individual.

No sooner, however, had this Mr Scott laid in the grave the head of his benefactor, and the supporter of his mother's family, than a charge was made against the minors for the principal in a bond of £100, with which their father was burdened, in favour of his sister, by his father, with a load of interest thereon, and a shop account for millinery goods, long proscribed, and more than twenty times paid by their father, which, altogether, with in-

terest, amounts at present to £600 sterling; and it is almost unnecessary to add, that no credit was given to the minors for the various sums their father had paid during his life-time to the factor's mother, and which sums more than *ten times* extinguished the bond and shop account.

This Mr Scott has, for twelve years, been *canting* to your Lordships about his great friendship to the minor family, and how deeply they are indebted to him for preventing their property from being carried off by illegal claims. What illegal claims he has resisted the petitioner has not been able to discover; but he shall now state one which the factor *created*,—and *afterwards aided* and *assisted* certain individuals in prosecuting the minors for such a claim.

When the father of the minors died, all the servants he had were paid every claim which in law and in justice was due to them. An old man of the name of Middlemas and the factor alleged that the deceased was due him of wages two hundred pounds sterling; and the said factor, in his own hand-writing, made out a state of the claim, under pretence that it was only to gratify the vanity of an old man, and prevent any clamour in the country. He prevailed on the young ladies, as they became of age, to sign bills for their proportion of this claim, assuring them that he would take care that the bills should not go out of his possession. And this resolution he religiously adhered to, for instead of giving the bills to the pretended claimant he put them in his own pocket; and after the old man died, the factor made a claim upon the minor family to the extent of the bills, with the interest thereon, pretending that the debt had been transferred to him and to his cautioner.

The parties refusing to admit the claim in his person, an old woman of the name of Isobel Gray, a relation of the pretended claimant, but not even his heir-at-law, was then brought into the field. In her name, Mr James Greig, writer to the signet, under Scott's directions, com-

menced an action against the parties who had signed the bills. From Scott he received all his instructions, and to him he made all his communications. The name Isobel Gray was only used as a stalking-horse to *deceive your Lordships*. In her name Greig was successful in obtaining decreet; in her name he signed the discharge to John Tweedie, Esq. writer to the signet, for the money. He put it in his own pocket. He advised Scott that he had recovered it; but he never advised his pretended client Isobel Gray; and that money so recovered was in the pocket of Mr Scott, or in the pocket of his agent Mr Greig, when your Lordships consigned the petitioner to this jail. If such transactions does not establish against your Lordships' factor the charge of "*falsehood, fraud, and wilful imposition,*" the petitioner does not know the meaning of the term.

The petitioner will only trouble your Lordships at present, with mentioning another circumstance in this factor's pleadings. He has on some occasions found it necessary *to state the truth*, namely, that the father of the minors was a prudent, active, enterprizing farmer, "occupied extensive "farms, held valuable leases, and was, at his death, in "opulent circumstances." *This is true.* He occupied at his death the farms of Crailinghall, Upper Crailing, Haugh-head, Cappoch, and share of a grazing farm for his young cattle called Muirfield. His leases were valuable. The farm of Crailinghall was let, two years after his death, at an advance of *six hundred guineas*, and his successor made a fortune in it. The same may be said of the other farms. He was in easy circumstances; and the factor might have added that he had lent to himself £200 sterling. A few months before the minors' father died, he succeeded, as can be instructed, to a considerable sum upon the death of an uncle. To what extent the uncle's property has been plundered, cannot be instructed, but unfortunately for the minors, the whole of their father's property has disappeared, for in the factor's accounts, obtained only by compulsion,

eleven years after his appointment, it does not appear that he has at any time placed to the credit of the minors a sum *exceeding* that which was then left by their father's uncle. This is incomprehensible. Their father was not in arrears with his landlords: he had no bank credit: he had no borrowed money, on the contrary, he had money lent out at interest; the hills on his farms were covered with sheep and black cattle; and his stack-yards were full of corn. But as the factor has thought proper to lodge *no tutorial inventory*, conformable to the Act of Sederunt and *no annual accounts whatever for a period of eleven years*, it is totally impossible for the petitioner to state precisely to what amount the minor family has been plundered. The preamble to the Act of Parliament already quoted will satisfy your Lordships on that point. Taking the property of the father of the minors as left by him at only £3000, that sum, with the wreck of the grand-uncle's property, as admitted, forms a present claim exceeding £10,000. But the petitioner, on this head, shall only add, that if four months' imprisonment is, by your Lordships, considered an inadequate punishment for the manner in which the petitioner has represented such wrongs, what punishment awaits your Lordships' Court factor, who has by falsehood and by fraud so deeply wronged him?

It has been hinted to the petitioner, that there is cause to suspect the honour of one of the counsel named in this paper; and that he, having reason to believe, that if the action was not got out of Court, his conduct might at some period of the procedure be highly censured by your Lordships, and under that impression it is supposed that he advised his clients to abandon their cause; and in order to induce them to do so, he represented the conduct of your Lordships in an unfavourable light. Be that as it may, the petitioner has much to say in favour of the other counsel, and he trusts that your Lordships will not be offended by the petitioner saying, that he did not believe what his senior counsel stated, when he said, that "how-

" ever improper" the conduct of that factor had been, the petitioner would not obtain redress, even to the extent of commission. The petitioner laments that your Lordships did not consider it to be your duty to enquire into the conduct of Mr More; and he laments that you censured the petitioner for complaining of being wronged by his counsel.

After Mr More and Mr Hope had refused to act, and after the petitioner had, in open Court, been threatened for complaining against them, many of his friends advised him to abandon his cause, however well founded his claims were, for in their opinion, he never would get justice; that your Lordships appeared hostile to him, and determined on his destruction; and that, as the Court would not allow him to write his own papers, there was reason to suspect, that agents and counsel whom he might in future employ, would also betray trust, or perhaps carry on correspondence with some of your Lordships, in order that the petitioner's case might be murdered. Such insinuations as these, the petitioner treated with the contempt which he at the time conceived they merited.

He felt under that unqualified reproof he had received from Lord President Hope, in public Court, for complaining of Mr More and Mr Hope, but this he imputed to an error of judgment, and not to criminal intention on the part of his Lordship.

Accordingly the petitioner employed Mr Alexander Gifford to be his agent, and through him, Mr Thomas Hamilton Miller, was engaged as counsel. After various promises, delays, and proceedings, unconnected with the merits of the case, and which are not unknown to your Lordships, the petitioner made the painful discovery, that this Mr Gifford, his confidential agent, and Mr Miller, his confidential counsel, had acted in such a manner as to induce the petitioner to suspect that both of them had betrayed trust, and had been carrying on a secret and illegal correspondence with Lord President Hope,

injurious to the petitioner. Gifford made distinct articles of charge against the petitioner for his trouble in attending a meeting and consulting with Mr Miller, what to communicate secretly to the Lord President; he made a charge for copying papers to be sent to his Lordship; and further, he made a charge for writing a private letter to that Judge, injurious to the interest of his own clients, and of such a description, that he dare not furnish the petitioner with a copy of it, or of the document drawn up by him and Mr Miller, although he charges his clients with the trouble he has had in degrading his profession, slandering a Judge, and injuring his own employers.

The petitioner is sorry to say that Mr Miller has gone a step beyond Mr Gifford, and were the petitioner warranted to believe what he has written to his clients, of or against Lord President Hope, the petitioner would be justifiable in framing a conclusion he will not so much as hint at. This gentleman was positively and distinctly engaged to be counsel in the cause during the action; but after writing a single paper he declined to support it at the bar, and insinuated that, at some private meeting, your Lordships had acted in such a manner, as to induce him to "conceive" that you had relieved him from the positive engagements he had entered into with the petitioner. Mr Miller's words are:—"Having written the memorial "for the pursuers, I conceive I have done all I *was en-* "*joined to do in this case by the Court;* and I must now "beg to decline acting any farther in it as counsel;" and he refused to support the paper he had written. Your Lordships will here perceive a distinct allusion to a private meeting Mr Miller had with the Court, where the conversation, according to his view of the subject, was such as to induce him to "conceive" that, by writing that paper, he had completed all that "the Court enjoined him "to do." To insinuate that he ever did hold a private meeting with your Lordships, is slandering the Judges; laying out of view the malicious sporting with the private

interests and feelings in making such a communication to his clients, allowing that it had been true. Some time afterwards, this same individual intimated that he would again appear counsel in the case, " but on this express " condition, and no other, that Mr Hay is henceforth to " consider himself, and to be considered merely as a client, " and as such, to leave the management of the cause en- " tirely to his agent and counsel; and that he is in no " instance to attempt to dictate or prescribe to them in " which way they are to conduct it." By these conditions, it must be obvious that the agent and counsel would have secured to themselves the absolute and uncontroulable direction of the petitioner's cause, without incurring the smallest share of responsibility, however criminally they might have acted in destroying the petitioner's interests. Disgraceful as these conditions are when viewed as dictated by a counsel, they appear infinitely more detestable when viewed as the production of a Judge. It is therefore impossible to convey to your Lordships any correct idea of the petitioner's feelings when Mr Miller, in his next letter, made the following *startling* communications:—" I take this opportunity of adding, that the " conditions expressed in my above mentioned letter, are " precisely the same in substance, though not in words, " with those laid down by the Lord President!!!"

The petitioner is, in the Lord Advocate's printed answers, termed a " delinquent," " a committer of offences," one who stands convicted of having " wickedly defamed, " calumniated, and libelled several of the Judges of this " Supreme Court." His Lordship might have added, one who was denied a trial by jury, and declined to plead a defence before those whom the petitioner viewed as the complainers, the judges, and the jury. Now, if four months confinement in a jail, without the benefit of fresh air, is not a sufficient punishment to a British subject, prosecuted by the King's Advocate, and tried and condemned in the manner the petitioner has described, what

punishment will your Lordships inflict on these five members of Court who have deeply injured the petitioner, betrayed trust, refused to do their duty, slandered your Lordships, degraded that profession of which they are members, and produced suspicion, distrust, and dissatisfaction on the public mind. For your Lordships ought to know, that the appearance of aversion shown by the Lord Advocate to enquire into the conduct of those the petitioner has complained of, and the manner in which he has been treated, has produced an impression on the minds of many, that in consequence of the misconduct of counsel and agents, the petitioner is not getting justice at the Bar of your Lordships, *and that there is reason to suspect the existence of some detestable plot or conspiracy against him* for having presumed to remark with freedom on abuses that were naturally enough forced upon his attention. In so far as your Lordships are concerned, the petitioner is bound to believe that the most unfavourable view of the subject is only an error of judgment, and that you are as ready to inflict punishment on those who have wronged the petitioner and slandered the Court, as you are ready to punish the petitioner for improper expressions in his writings when complaining of being wronged.

Your Lordships say, that the Court is most anxious to enquire into the petitioner's wrongs, but then his petitions against counsel must be signed by counsel; and as no counsel will sign a complaint against a learned brother, nor state the facts against him, your Lordships will perceive that you have coupled the petitioner's obtaining justice with a condition which depends on the will of others, over whom the petitioner has no controul. Your Lordships' Act of Sederunt 1789, which prevents the conduct of counsel from being enquired into, except with the consent of his brother counsel, is not only unconstitutional, but contrary to reason, as it places the Bar above the Bench, and confers on counsel a privilege which Judges do not themselves enjoy.

A complaint from the petitioner, with his humble signature annexed, is in Parliament receivable against even *the head of the Supreme Court of Scotland.* The petitioner is under no necessity of applying to any of your Lordships for their signature to a complaint against a brother Judge. But however much the petitioner may be injured by a Scotch counsel at your Bar, the petitioner can obtain no relief; the guilty individual is quite secure, unless some of his companions are so uncivil as to sign a complaint against him, and this they will not do for the petitioner.

The petitioner has already said, that he has in his possession the speech of Lord President Hope, written out by his Lordship's own hand, and from that speech he will again quote:—"But, Sir, in reference to the due administration of justice, the worst part of your conduct remains behind; for, not satisfied with doing every thing you could to intimidate the Judges of this Court, you presumed, while your cause was in dependence before the Lord Ordinary—you presumed to write to the accountant appointed by his Lordship to examine and report upon the factor's accounts, an abusive and threatening letter, in the hopes of extorting from him a report favourable to your claims. From which, Sir, it appears that you, who stand forward as the apostle of liberty and justice, have no just notion of either; for you seem to act as if you thought that liberty consists in the indulgence of your own ungovernable passions, and justice in every thing being made subservient to your own interest."

The petitioner being accused in public Court of dishonourable behaviour, and proceeding from such a sordid and selfish motive, he trusts that your Lordships will permit him to show that Lord President Hope, in charging him with such criminal conduct, has committed a mistake. The petitioner never did write a threatening letter to the accountant, nor did he make any communication

whatever to him, until the accountant had finished his report, and transmitted the same to the petitioner, for the express purpose of having his approbation or objections to it. This fact is established by the oath of the accountant, when sworn before your Lordships. "Deponed, "that having made a draft of his report, *he transmitted* "*the same* to the agent for Mr Hay, *desiring him to* "*make his remarks upon it.*" In reading Lord President Hope's charge, this fact is entirely kept out of view, and the matter is represented as if the petitioner had of his own accord, and at an improper period, made a communication to the accountant, illegal in the act, and criminal in the object. The fact being established, that the accountant ordered the petitioner to transmit his observations on the report, which was put into the petitioner's hands for that distinct purpose, the illegality of writing the said accountant totally disappears; and this brings your Lordships to the matter contained in the said communication, which has been termed abusive and threatening in the language, and dishonourable and criminal in the intention.

The petitioner denies the criminal intention; and he also denies that the language is either threatening or abusive under the circumstances of the case. On the contrary, he maintains, that he only asked the accountant to frame his report consistent with truth, and to make up a state of accounts betwixt the parties conformable to law. In demanding this, he only asked that justice which your Lordships, before God and your country, administer to others. And he rather thinks that, in support of this averment, the following quotation from that letter to the accountant establishes the fact. There is no threat, but argument in what follows:—

"You are very sensible, that when this factor was ap-
"pointed by the Court in 1798, he subscribed a bond,
"and entered into a positive obligation to lodge tutorial
"inventories as directed and laid down in that Act under

" which he *petitioned to be appointed*, and that he also " bound himself under heavy penalties not only to lodge " tutorial inventories, but also to make up and lodge with " the Clerk of Court each year distinct statements of his " intromissions, charge and discharge. In order that he " might securely plunder the minors, he totally failed " to perform the obligations in the Act; but surely this " does not alter the law, or annihilate the contract which " still remains in all its original force. And in now " making up a state of accounts betwixt the parties, it is " clear that they must either be made up in a legal or an " illegal manner. If in a legal manner, they will be made " up conformably to the conditions contained in the Act " under which the Court appointed the factor, that is, in " yearly statements, charge and discharge, the annual in- " terest being applied to extinguish the annual family ex- " penditure, and the balance each year carried forward to " the next year's statements. If in an illegal manner, " then they will be made up in complete opposition to the " directions contained in the Act under which the factor " contracted with the Court. And this is just what you " have now done. You have branched out the accounts " for a period of twenty-three years,—you have rendered " the interest unproductive,—and, by a combination of " errors, you have in your statements deprived the family " of minors of about £4000 of the wreck of their fortune, " which, both by the principles of law and justice, is ab- " solutely their own.

" You know much better than I can inform you, that " I am here stating the truth. You know well that the " factor cannot object to the accounts being made up by " you, on the same principle, and in the same manner, " in which he was by law bound to have produced them " himself. You know well that the family of minors have " an absolute right to get their accounts made up in that " manner, any other method being illegal, and contrary to " the positive and existing law under which the property

" was intromitted with, and carried off, by order of the " Court.

" It surely will not be contended, that the Court can, " in justice, cause the property of minors to be carried off " from them under the authority of a given law, and then " deny them the protection which that law affords. This " would be clearly establishing that a conspiracy had been " entered into to rob Mr Cranstoun's family of their pro- " perty. *The Lord President, Lord Succoth, and yourself,* " *have no more right to deny me the benefit of the laws* " *made for my protection, and under which my property* " *was carried off, than you have a right to rob me on the* " *highway.* I do not now, therefore, beg of you as a " favour to make up the accounts as directed in the Act " of Sederunt. *It was your bounden duty to have done* " *so.*

" It is not my intention to attempt to convince you that " either your first or second report can be corrected. I " object to your statements *in toto.* The facts speaks vo- " lumes, and require little or no comment. Instead of ap- " plying the annual interest to meet the annual expenditure " as directed by the Act, you have opened heads for the " interest, without rendering it productive; and you have " drawn the yearly expenditure from the principal, thus " depriving the minors of their property, and illegally en- " riching the factor."

The petitioner has annexed a state of claim against the said factor made up from his own admissions, as appears in his accounts obtained only by compulsion twelve years after he had been in possession of the estate. The factor, in his accounts, contrived to make the minor family £50, 2s. in his debt; and, from the same accounts, the petitioner has made the factor above £3000 indebted to the minor family; not to mention the expense of twelve years' litiga- tion,—the general bad conduct of the factor,—and the suspicious circumstance of his never having debited him- self with a sum exceeding that which he recovered from

the estate of the grand-uncle of the minors, as has been already stated.

Your Lordships are sensible that the petitioner has had the misfortune to offend your Lordships, and to be tried by those he offended. For reasons already explained, and standing on record, the petitioner declined the jurisdiction of the Court, and refused to examine any witnesses, or make any defence. This ought to have made the prosecutor's witnesses more guarded in stating the truth when upon oath, as they were not to be cross-examined. In so far as regards the witnesses *who were not members of the Court*, they all swore correctly; but some of those who were members of Court, gave their evidence in such a manner as would convey to the public an incorrect opinion of the petitioner's conduct; and one of them, in particular, swore, 1*st*, That he relinquished the petitioner's employment, because the petitioner did transmit to him on the 26th of August 1818, a variety of printed papers. This is not true. The petitioner sent him no variety of printed papers on the 26th of August 1818, when he relinquished the petitioner's employment: 2*dly*, He swore, that among these papers (the words, "he also thinks," were interlined afterwards,) there was a printed letter addressed to Mr Wynne, Member of Parliament. This is not the fact; and further, it is impossible it can be true, because the letter was not printed for two years after August 1818, and because the letter produced takes notice of the actions of that very individual, which happened *long* subsequent to August 1818: 3*dly*, He swore, that among the variety of printed papers, there was a copy, or extract from a copy, of an Act of Sederunt, or petition for recal of an Act of Sederunt. This is not true; and besides, the printer has sworn in direct opposition to it: 4*thly*, He swore, that along with these papers transmitted him in August 1818, there was a letter from the petitioner, in which the petitioner announced it was his intention to publish. This is not true. The petitioner sent no such

paper, nor did he send any letter containing a single hint or expression about publication on the 26th August 1818. It is a fact, however, that this witness did most improperly relinquish the petitioner's employment in August 1818; and it is also a fact, that he did, upon oath at your bar, state four reasons for doing so, and all of them are incorrect. That witness was one of the petitioner's counsel for a considerable time; he was bound by his honour as a gentleman, and by his professional oath as an advocate, to support the petitioner's interest; but it was a disgrace to relinquish the petitioner's employment in an improper manner, and afterwards appear at the bar against his own employer. The truth is, he broke down with his own weight in open Court, not under cross-examinations, but in the hands of the prosecutor, while giving evidence against the accused. Your Lordships do not require to be told, that after a witness is put upon oath, he must stand with his face to the Judge, and not a whisper, not a word must be said to him, or by him, but in the hearing of both parties and of the Court. This witness finding that he could not go on, after he had sworn to that which was not true, turned his back on the Court, and had entered into a private and whispering conversation with the Crown counsel, and it was then, and not till then, that the petitioner complained of such a proceeding. The words "he also thinks," were interlined after the petitioner had complained that the witness had sworn that he had received a letter addressed to Mr Wynne, *which was not printed* in August 1818. The petitioner trusts, that your Lordships will consider it your duty to enquire into the conduct of this individual, and allow the petitioner to prove what he has stated. It is hard, indeed, that members of Court should first injure the petitioner by a breach of professional duty, and afterwards give evidence against him in the manner he has described.

The petitioner shall only add, that he feels confident

that the honour and dignity of the Court, and the justice of the country, will point out to your Lordships the propriety of an inquiry into the wrongs complained of. These wrongs the petitioner has stated and animadverted upon with that freedom which he conceives an injured subject has a constitutional right to do in a free country. But if in any instance he has exceeded the bounds of fair discussion, he will not only expunge such expressions from the record, but he will publicly express his sorrow for such a mistake; for it is not the petitioner's object to offend your Lordships, but to convince you, that under a combination of circumstances he has been deeply injured.

The petitioner when formerly complaining of his wrongs, did, under irritated feelings, use expressions which cannot be justified, and for that he sincerely expresses his sorrow; but he is conscious in his own mind, that he never did maliciously use any expression with the intention of calumniating your Lordships. He trusts he has in the present application, satisfied one and all of your Lordships, that he is not the party who is most guilty, nor the individual who ought to be confined in a jail. And therefore, he confidently expects you will liberate him, and afford him such other relief and redress, as to your Lordships shall seem just.

In respect whereof, &c.

JOHN HAY.

CANONGATE JAIL,
15th June 1822.

"*Edinburgh, June 20th* 1822.

"The Lords appoint duplies to these replies to be "given in, printed, and put into the boxes, on behalf of "his Majesty's Advocate, within eight days from this "date, with certification.

GEO. FERGUSON, *I. P. D.*"

DUPLIES for Sir William Rae of St. Catharines, Baronet, his Majesty's Advocate, to the Replies for John Hay, presently a Prisoner in the Jail of Canongate.

The only question which can competently come before your Lordships in the present discussion is, whether the petitioner, John Hay, is entitled to be liberated from the jail of Canongate, without finding surety, in terms of the sentence under which he is imprisoned.

In the answers to the petition for liberation, the respondent stated that it was not competent for your Lordships to review, or alter, or remit any part of the sentence you had pronounced; and that even if such a power had been vested in you, there was no sufficient reason stated why you should exercise it on the present occasion.

The respondent purposely avoided entering into any discussion regarding the irrelevant and groundless statements with which that petition was loaded; but he concluded his answer, by stating that, if it appeared, from the authenticated report and evidence of medical men, that the petitioner's health was impaired by imprisonment, and that a continuance of imprisonment would endanger his life, your Lordships might afford him relief.

He has not with these replies produced any certificates by medical men, or mentioned the subject of his health at all, but has devoted about twenty-seven printed pages to statements totally irrelevant to the question of his liberation.

These statements seem to consist of accusations against members of Court, and even reflections upon the Court itself; and they contain much discussion relative to the merits of actions depending in Court, and to which the petitioner is a party. But here all these things, even were there any foundation for them, are out of place; and it cannot be expected of the respondent, nay, he conceives it would be improper for him to enter at all into these ir-

relevant matters. If the petitioner really thinks he has any grounds of accusation against members of the Court or others, he may advance them in proper time, place, and shape. If he has any complaint to make against the judicial factor, Mr Scott, he may make that complaint in proper form; if he has any pleas to urge on the merits of his cases, he can urge these in the cases to which they relate; but the only question at present before your Lordships, and to which you can at all listen, or to which the respondent is called upon, or, with any regard to regularity, can be permitted officially to address himself in this discussion, is, whether the petitioner is entitled to be liberated without finding surety for his good behaviour in terms of the sentence pronounced against him; and upon that question the respondent does not conceive it necessary to add any thing to the statement in his answers, because nothing is said upon it in the replies.

It is almost the invariable practice, when persons are punished for offences similar to that of which the petitioner has been convicted, to ordain them to find surety for their good behaviour for a certain space of time; and, if that part of the sentence against the petitioner is now remitted, merely because he says that his friends do not chuse to become sureties for him, it is plain that such a sentence cannot be enforced against any delinquent whatever, as every delinquent can state that plea.

In respect whereof, &c.

DUN. M'NEILL.

"*Edinburgh, 2d July* 1822.

"The Lords of both Divisions of the Court having re-
"sumed the consideration of the petition for John Hay,
"and having advised the same, with the answers, replies,
"and duplies, and the note given in for the said John
"Hay, find, that in so far as Mr Hay refers in his peti-

"tion and replies to the cause depending between him and "Mr Scott, it is not competent for this whole Court to "make any order in that process depending before an "Ordinary of the First Division, and therefore that all "such matter is irrelevant in the present application; and "further, find that the petition and replies for Mr Hay "contain many false averments as to the proceedings of "the Court, particularly as to the Lord Advocate having "been present at the private deliberations of the Court; "and also many injurious and calumnious reflections on "the Court and Members of the Bar: therefore, as well "as on the merits, refuse the desire of the petition and "note; but in respect that the petitioner sets forth that "he cannot find persons to be security for him, reserve to "the said John Hay to apply to the Court to be liberated "on his own bond, in terms of the original sentence.

(Signed) "C. HOPE, *I. P. D.*"

When I received the above interlocutor, I declined signing any obligation whatever; but my friends advised me to press the matter no further, as the signing such an obligation did not prevent me from doing any thing that was *in itself legal and constitutional*, under the particular circumstances in which I was placed. After some further procedure, I became *bail for myself*, and obtained liberation from jail.

I was confined in jail from the morning of the second day of February, to the evening of the eighth day of July last, being upwards of twenty-two weeks. On obtaining liberty, I instantly set off for London, in order to complain to the House of Commons. My petition was presented by Mr Hume, and the subject received great justice from that Honourable Member, who spoke for about half an hour. He commenced by saying, that the petition he held in his hand contained such complaints, and such unqualified charges against the Lord President of the Court of Session, that he had for some time

hesitated to present it. But having received letters from respectable individuals in Edinburgh, corroborating the averments in the petition regarding the procedure in Court, and having compared the petition with the documents in support of it, he considered it his duty to lay the petition before the House. The Honourable Member took notice of *laws made by the Court*,—of President Hope's assertion, that these were "the law of the land." Mr Hume said, "It has been twice denied in this House "that his Lordship used such expressions; the petitioner "now offers to prove the fact at the bar, but what renders "this of less importance, I hold in my hand a speech "written out and corrected by Lord President Hope, "and transmitted to the petitioner in jail, in which his "Lordship states, that the Act of Parliament 1672, "made for the protection of minors, being defective, the "Court made an Act of Sederunt much better, and con-"taining excellent regulations. So, Sir, (looking to the "Speaker) we have it here in *writing, under Lord Pre-"sident Hope's own hand*, that when your laws are by "the Judges considered defective, they do then legislate, "and Acts of Sederunt *then become the law of the land*. "The petitioner states that he has been deeply injured "by such proceedings; that he has been prosecuted like "a criminal, and, without the verdict of a jury, sentenced "to four months imprisonment. I admit, Sir, that every "Court has a right to support its own dignity, and pu-"nish for contempt. But here is a prosecution, *not at the "instance of the Court*, but at the instance of his Majesty's "Advocate for the public interest, the accused was charged "with crime, but he was denied a trial by jury; he was "tried by those who, as the petitioner expresses it, were "Party, Jury, and Judges; he was pronounced guilty "by those who had an interest in doing so. Now, what "did the petitioner do in such a case? he just did, what "I for one would have done, and what I believe every "member in this House would have done in the same si-

" turation,—he declined the jurisdiction of the Court,—he " placed on record his reasons for doing so—he refused to " join issue with his Majesty's Advocate, or plead a de- " fence. The petitioner states, that this prosecution against " him has arisen out of an action he has in the Court of " Session against a Court factor, in consequence of com- " plaining that his property had been intromitted with by " a law made by Judges, and that the action for recovery " of that property has been thirteen years in Court, with- " out any prospect of a termination. It will be stated " from the other side, that the petitioner has used strong " language to the Judges, and addressed them in a man- " ner they are little accustomed with. I admit he has " done so, and I will be glad to know that precise style of " language in which these Judges expect to be addressed, " after causing a man's property to be intromitted with " *by a law of their making,—detaining his case before* " *them for thirteen years, and ruining him and his fa-* " *mily with unbearable expenses?*" The Honourable Member was extremely severe on Lord President Hope laying down conditions to Mr Miller,—convening the Judges *with shut doors, and there obtaining their opinions and votes.* But what appeared to make the deepest impression on the House, was, that of charging his Lordship with concealing and keeping back my petitions from the Court, praying for such accommodation in the jail as might not deprive me of life. Every Member in the House seemed astonished at what Mr Hume was then stating; some of them rose up from their seats. The Lord Advocate made signs of displeasure, by shaking his head. " The Learned Lord (said the Honourable " Member,) may shake his head, but I state the fact from " a document his Lordship cannot dispute. I hold in " my hand a letter from Lord President Hope to the " petitioner in jail, *telling him, that he had kept back his* " *petitions from the Court!* These petitions, Sir, describe " the miserable apartment in which Mr Hay was con-

" fined, that *old matts were placed on the wall to keep out* " *the cold,—that the rain from the roof had destroyed* " *his bed,—that he was in bad health,—and from the* " *want of a bed was sleeping on chairs in the cold month* " *of February.* I put it to the candour of this House, " what opinion can be entertained of that Judge *who could* " *conceal such petitions from the Court.*" The Honourable Member concluded by moving, that the petition be received, and pledged himself to make a motion next Session for production of the papers in the prosecution. The petition was accordingly received and laid on the table, of which the following is a copy :—

To the Honourable the COMMONS of the UNITED KINGDOM of GREAT BRITAIN and IRELAND, in Parliament assembled; the Petition of JOHN HAY, late Merchant in Leith.

Sheweth,

That your petitioner was lately a merchant in Leith, and in 1809, became related to a family who had been minors, and whose property had, by order of the Court of Session, been carried off and intromitted with under a law made by that Court, in direct opposition to the Act of Parliament 1672, made expressly for the protection of minors. The result of such procedure is, that property to the extent of £10,000, including interest, cannot be recovered. The injured family have for thirteen years petitioned for justice and restitution of their property, but in vain. They have proved against the intromitter appointed by the Court, acts of gross moral fraud, falsehood, and wilful imposition; yet, in the face of all this, they have, by Mr John More, and Mr John Hope, (the Lord President's son,) been advised to " *abandon the cause, for* " *however improper the factor may have acted,* he would " not on that account be deprived even of his commission," *the Court not being in the practice of giving minors the*

benefit of the act under which the Court caused their property to be carried off from them. The petitioner suspecting the truth of such a statement, petitioned the Court for the recal of the Act of Sederunt 1789, which prevents the injured party from stating his own cause; and, about the same time, he complained that Mr More and Mr Hope had refused to state his case to the Court. For so doing, the petitioner was called to the Bar, and by Lord President Hope, reproved in the most intemperate manner. His Lordship, without enquiry, declared the petitioner's *complaint against counsel false*, he said, that "Acts of "Sederunt were the law of the land," and threatened to treat the petitioner as a criminal, if ever he again troubled the Court. The petitioner afterwards employed Mr A. Gilford to be his agent, who engaged Mr Miller to be counsel in the cause. In so far as their written evidence is entitled to credit, they secretly corresponded with Lord President Hope; and it appears that his Lordship at some private meeting, laid down conditions to Mr Miller how the petitioner's cause was to be managed, or rather how it could be murdered by the counsel without being responsible. *His Lordship has repeatedly denied having laid down* conditions to that counsel, but he has always declined ordering him into Court, face to face, before the petitioner. The petitioner conceiving that he had been deeply injured, and suspecting the existence of a conspiracy to ruin him for exposing such abuse, complained through the press to Members of Parliament and others. *This gave offence to the Court of Session, and the Lord Advocate of Scotland*, thought proper to prosecute the petitioner as a criminal, *not before a jury, but before the Judges who had wronged him, and who had an interest in convicting him.* For reasons standing on record in the process, the petitioner refused to plead a defence before those who were Party, Judge, and Jury, in their own cause. He prayed for a trial by jury, but this

was refused him; and under such procedure, after eight days' attendance in Court, he was torn from his young and unprotected family, and closely confined in the jail of Canongate, from the second day of February till the eighth day of July instant, being upwards of twenty-two weeks. In this procedure, not only the forms of justice, but the very appearance of it were totally disregarded. *First, Under Lord President Hope's own hand-writing, it appears that he was summoned before the Lord Advocate, the prosecutor, and secretly gave evidence against the petitioner, and afterwards sat Judge in the cause, and presided over the Court. Secondly,* One of the witnesses having sworn to that which was not true, found he could not go on, he turned his back on the Court, and entered into a private or whispering conversation with the Crown Lawyers. The petitioner complained of such shameful procedure, and for doing so was reproved. *Thirdly,* For several days during the trial, the Judges had consultations in a private room before they entered the Court; and in that private room the Lord Advocate was seen with them, and from it he accompanied them into Court. *Fourthly,* There is an Act of Parliament which was made since the Revolution, expressly declaring, that the *Judges in the Court of Session shall not give their opinions and votes on questions before the Court in a private room,* but in public Court, and that there the interlocutor shall be written out, *not by the Judge,* but by the clerk appointed by the Crown, declaring that all cases decided in any other manner, or interlocutors written out in any other place, shall be "*null and void,*" and the writer and signer thereof shall be deprived of office. In the petitioner's case, the Judges acted in the teeth of this statute. The Lord President convened them in a private room, then and there their opinions were delivered, and the interlocutor written out, which interlocutor Lord President Hope brought into Court. The treatment received in jail, in so far as his Lordship is concerned, corresponds with his general

conduct towards the petitioner. When delivered over to the keeper, he found that no apartment had been provided for him, and had he not obtained one by favour, he would have been under the necessity of associating and sleeping with the very refuse of society.—A petition was *transmitted to the Court in usual form*, stating the fact, and praying for accommodation. The Lord President thought proper to *keep back that petition from the Court.* A second petition was transmitted, which was also concealed from the Court, and in the most contemptuous manner, returned by the penny-post, under a blank cover, by his Lordship's clerk. At that time the petitioner occupied a small and miserable apartment, where the dampness of the bed compelled him for some time to sleep on chairs, in the cold month of February, and no other apartment was ever provided.

These are the wrongs the petitioner with humility submits to the consideration of this Honourable House. He has by judicial legislation and corrupt procedure, lost considerable property belonging to his wife, independent of the expense, the loss and damage he has sustained in attempting to recover it, the petitioner respectfully entreats this Honourable House to enquire into the wrongs he has suffered, by ordering the production of the records of the procedure in the prosecution against him.

May it therefore please this Honourable House to order the records of procedure against the petitioner to be laid on the table, to take his case into consideration, and to afford him such relief under the circumstances of the case, as to this Honourable House shall appear just.

And the petitioner will ever pray.

(Signed) JOHN HAY.

LONDON, 18*th July* 1822.

COPY of an APPEAL to the Public, by JOHN HAY, circulated in September and October last.

It is a position which is maintained in every free state, "that all power is derived from the people," and that they have a right to be informed of the public acts of those individuals to whom that power is delegated. Our laws are made by Parliament for the protection and security of our persons and property, and if those who are intrusted with the execution of them do either pervert the law, delay justice, or oppress the subject, they are highly culpable, and ought to be called to a strict account before that tribunal to which they are amenable. The public have a right to witness judicial proceedings, to censure or approve of them. If that right is denied by Judges,—if they dare to proceed against the subject in one single step *with shut doors, or out of Court*, or in public Court *prevent the meanest individual in the United Empire from repelling charges* stated to injure his character or cause, they take upon themselves a fearful responsibily. Their Sovereign was sworn "*to* "*deny or delay* justice to no man," and with that oath they are entrusted.

In order that my complaint, as stated in the following note, a copy of which has been transmitted to Lord President Hope, may be intelligible to those who are not acquainted with the whole proceedings, it is necessary to state the outlines. A gentleman, possessed of considerable agricultural property, and who occupied extensive farms in the south of Scotland, died in 1798, without having made a settlement of his affairs, leaving a minor family of young ladies. A merchant in Edinburgh petitioned the Court to be made factor on the estate. The Court appointed him, *not* conformable to the statute of Parliament 1672, made for the protection of minors, *but under the authority of a law made by the Court*, termed an "Act "of Sederunt," and so formed, under existing procedure, as to *aid and assist their factors in plundering the estates*

of the fatherless. This factor availed himself of such an opportunity,—he entered possession without making up inventories of the property, conformable to law, and for twelve years he made up no annual accounts or statements of any description; he refused to do so, and when the minor family became of age, he disputed *in toto* their right to call him to account, or to obtain from him any settlement whatever. In 1809, I became related to the family, and, under such circumstances, I was advised to complain of this factor to the Court. Thirteen years litigation has convinced me, that however *fraudulently*, and however *criminally*, Court factors act in plundering the fatherless, relief in the Court of Session, under existing procedure, before Lord Suncoth, is extremely doubtful, if not hopeless.

After my cause had been *eight* years before his Lordship, and about as many hundred pounds spent to no purpose within the walls of the Court, Mr John More, and Mr John Hope, advocates, both then in my employment, delivered an opinion, *in writing*, advising the cause to be given up, and one of the reasons they assigned was, "that "*however* improper the factor had acted, *he would not*, on "*that account*, be deprived *even* of commission," because the Court was not in "the practice" of giving effect to the act under which the Court caused the property of minors to be carried off from them, and they refused to remain counsel in the cause; one of them returned his Fees, the other kept them! This written and *unasked* opinion, not only astonished, but almost petrified some of the pursuers; it was so disgraceful to the honour of our Judges, and to the character of our Supreme Court, that I freely confess I did not at the time give credit to it. I complained to the Court of these counsel, that instead of stating my cause to the Court, as directed by me, they had favoured me with their own opinion on *the corruption of the Court*, which was not asked of them. I complained of laws made by the Court, and petitioned for leave to state my own cause.

For doing this, I was ordered to the Bar, and by Lord President Hope, reproved, insulted and threatened. My friends became alarmed for my personal safety, and as for my cause, the impression on their minds appeared to be, that *directly, or indirectly,* his Lordship would secretly correspond with any agent or counsel I might in future appoint, and that it would most assuredly be murdered by them. I felt indignant against those who could insinuate or hint at such an act of judicial depravity; but I am sorry to say, that in so far as the written evidence of the agent, Mr Gifford, and that of my counsel, Mr Hamilton Miller, is entitled to credit, it does appear, that certain communications *were secretly made* to his Lordship; and that he did, *unknown to me, lay down conditions to Mr Miller of a disgraceful description, and calculated to destroy my cause before the Court.* Gifford, in his account of the matter, appears to establish his own depravity and treachery to his clients, and that too in a manner by no means honourable to Lord President Hope, while his Lordship has twice, in public Court, *unqualifiedly denied* what Mr Miller has written. I have four times endeavoured to get this matter probed to the bottom, but I have always been prevented, either by the forms of Court, or by Lord President Hope. If his Lordship, after this public notice, still declines to order Gifford and Mr Miller to the Bar in my presence, in open Court, and will not allow their conduct to be fully investigated, the natural conclusion on the public mind will be, that his Lordship is guilty.

For complaining to Members of Parliament, and others, of the delay of justice, and for exposing such shameful procedure; in particular, for complaining to the Court of the errors, and misrepresentations, in a Report made up by Mr Russell, the Lord Advocate thought proper to prosecute me as a criminal before those who were parties in his complaint, and had an interest in pronouncing me guilty. The procedure and sentence of the Court is taken notice of in the annexed note to

Lord President Hope. Several of my friends have advised me to institute an action of damages against his Lordship, founded upon *deliberate malice*, injustice, oppression, and wrongous imprisonment. But the fact is, no action, however well founded, can be sustained against a Judge until his conduct on the Bench is disapproved of by a Superior Court; and as every British subject has an interest in the pure administration of justice, it follows, that they have a right, and that it is their duty to *aid and assist* in bringing before the proper tribunal public characters who abuse the powers intrusted to them for the general interest and good of the community at large. If, therefore, the public approve of the exposure of abuse, and the stand I have made against injustice and oppression, they ought to come forward, either individually, or collectively, and aid me in this unequal contest. Without the expression of public opinion, it is to be feared, that the proceedings against me will become "the law of the land," and will be quoted as a precedent for future prosecutions, or rather persecutions. But if vigorous and constitutional measures were adopted by individuals in different places of the country, in petitioning Parliament to inquire into the wrongs complained of, and funds provided to defray the necessary expense, we would soon discover whether Acts of Parliament, signed by the Sovereign, or Acts of Sederunt, signed by Charles Hope, are "the law of the "land;" and although his Lordship may never be able to discover "where his powers begin," the Representatives of the People would fully explain to him "where "they end." With feelings of veneration to my Sovereign, attachment to the constitution, and respect towards my fellow-subjects, I subscribe myself,

JOHN HAY.

York Place, York Lane,
Edinburgh, 14*th Sept.* 1822.

COPY of a NOTE transmitted to the LORD PRESIDENT of the COURT of SESSION, by JOHN HAY.

Edinburgh, 29th August 1822.

MY LORD PRESIDENT,

Your Lordship does not require to be informed,
A that an action in which I am a pursuer, against a Court factor, who had plundered a minor family of their property, was, by order of the Court, remitted to Lord Succoth, about *thirteen years ago*. The process is still before that Judge, without any reasonable prospect of coming to a termination. His Lordship orders pleading after pleading, and paper after paper,—the expense has been ruinous. Judging from his interlocutors, it appears to me, that he does not read the papers he orders, or that he does not understand the cause, although simple in the extreme. There is lamentable evidence of this fact to be found in his Lordships interlocutor, containing a remit to Mr Claud Russell accountant, before ever the points in dispute were determined by his Lordship. Both parties objected to the process being sent to him before he received it; but his Lordship forced it into his hands, and had some private meetings with him. The result is just what I anticipated, and what I was assured would happen,—a statement of intromissions, and a report made out on principles contrary to law,—contrary to reason,—and completely at variance with truth.

This factor appointed by the Judges under *one of their laws*, and in opposition to the statute, has been guilty of *gross moral fraud, falsehood, and wilful imposition*, practised to a great amount on the minor family, yet, at the end of thirteen years litigation, no relief can be obtained; and, what is worse, Mr Russell has attempted to *whitewash* the factor, and deprive the minor family of several thousand pounds, which by law and justice is absolutely their own. If any of these averments are denied or disputed, I earnestly entreat your Lordship will order Mr

B Russell and the factor into Court, that in open Court, and in Lord Succoth's presence, I may prove the truth of what I have here stated, respecting each of them. You know, my Lord, that it is the opinion of counsel, that "however "improper" Court factors act, they will be screened in some shape or other; counsel and others, say, it is not the "practice" of the Judges of our Supreme Court to give the orphan and the fatherless the benefit and protection of either statute or sederunt law. I sincerely wish I had less reason to believe the correctness of such an averment. From the treatment I have received, the public in general appear to think, that it is foolish in me to expect to obtain justice in the Court of Session,—they view me as a person to whom justice is denied, or will ever be protracted,—a victim whose rights in the Court of Session are to be sacrificed for having exposed the abuses practised on the estates of minors, and for having disputed the right of Judges to make laws in opposition to the statutes of Parliament. Such opinions as these ought to be checked,—they are injurious to your character,—disgraceful to the Court,—and ruinous to me. A conviction of that description on the mind of the public, alarms my friends, blasts my pursuits in life, and deters members of Court from acting for me, for fear of offending your Lordship;—and, as you will not allow me to write my own papers, I am by this method deprived of justice. My right to obtain justice is an inherent, it is an absolute right,—but for Lord Succoth to protract my cause by improper procedure, and for you to punish me for complaining of that abuse, is a total subversion of both law and justice.

However pure the motives of a Judge may be, whenever his actions on the Bench are such as to produce suspicion, distrust, and dissatisfaction, on the public mind, that part of his conduct which has created suspicion, ought to be fairly, fully, and publicly exhibited. An upright Judge will, under such circumstances, court investigation,

and will be most anxious to afford redress to the party he may have *unintentionally* wronged; and every corrupt, tyrannical, or malignant Judge, will endeavour to intimidate, injure, and destroy those they have wronged. I am bound to say, and I would fain try to believe, that your Lordship never did intentionally wrong me. You ought therefore to have no objection to explain your reason for repeatedly threatening to treat me as a criminal, because I remonstrated against your Acts of Sederunt, and complained of counsel for having betrayed trust. One of these counsel has, in writing, condescended upon *conditions* which he said you did, unknown to me, lay down to him—*conditions* calculated to destroy my cause in the Court.

C Your declining to order that counsel to the Bar in my presence, has produced on the public mind what I will not describe. You will also be able to explain how you could, constitutionally, and in justice, sustain an action before yourself in which you had a personal interest. In that action you was complainer to the public prosecutor,—you was by him examined as a witness, and furnished evidence to constitute the action against me; and afterwards you sat Judge in the cause, and directed the whole prosecution,—a prosecution, not at the instance of the Court, but at the instance of the Lord Advocate, for the public interest, and in that prosecution you assumed the conflicting functions of Party, Complainer, Witness, Judge, and Jury. My Lord, this appears to me a disgraceful perversion of the judicial character, and a fearful stretch of unconstitutional power. Are you quite certain that the public will calmly submit to see their fellow subjects treated in this manner?—Or that the Commons of Great Britain will applaud and approve of your treating their functions with contempt,—proclaiming Acts of Sederunt "the law of the land,"—subverting the constitution, by denying to British subjects a trial by Jury, when you have an interest in pronouncing the accused guilty?

D But this is not all, nor perhaps the worst feature in my complaint,—your Lordship presided over the Court,—you directed the proceedings—and, with submission, I do humbly think, that not only the forms, but the very appearance of justice was totally disregarded. One of the witnesses, a member of Court, swore to three distinct and deliberate falsehoods against me, and broke down, in public Court, in the hands of the prosecutor. Finding he could not go on, nor extricate himself, he turned round to the counsel for the prosecution, and entered into a private conversation with them. I complained of such disgraceful conduct, and for doing so was reproved; a minute was written out and signed by you, my Lord, approving of the conduct of that witness. Contrary to the legal method of publicly deciding questions in open Court, on which a final interlocutor is pronounced, you convened the Judges, *not in public Court*, but *in a private room*, with shut doors. There they delivered their opinions and votes, and there the interlocutor was written out, which you brought into Court in your pocket. You know, my Lord, that this was opposed to law, and in the teeth of a positive and existing Act of Parliament, made since the Revolution, which declares, that all questions on which a final interlocutor is pronounced by the Court, shall be decided in public Court,—that there the Judges shall deliver their opinions and votes, before the parties and the public,—and there the interlocutor shall be written out, not by the Judge, but by the clerk appointed by the Crown. And it further declares, that all questions decided otherwise, and all interlocutors written out in any other manner or place, "are null and void," and the writer and signer thereof shall be deprived of office. Although the Judges did, contrary to law, deliver their opinions and votes in private, and in my absence, yet the public prosecutor was seen with them at their private meeting, and from that private room accompanied them into Court. In open Court you condescended upon dis-

E tinct charges against me, which you said you stated for the information of the public; but contrary to every principle of law and justice, you expressly prohibited me from repelling those charges, or at the time saying one word in my own defence. Without any defence from me, and without the verdict of a jury, in an action, not at the instance of the Court, you thought proper to sentence me to be torn from my young and unprotected family, and immured in a detestable jail for four months. And this oppressive procedure was greatly aggravated by your keeping back and concealing from the Court two humble petitions from me in jail, stating the want of accommodation, and praying for such treatment as might not deprive me of life. These petitions you thought proper to conceal and keep back from the Court. It is acts of this description which require to be explained, and which have produced on the public mind an impression unfavourable to your honour as a man, your humanity as a Christian, and your integrity as a Judge.

I do humbly think, that when a British subject has been *unjustly* ridiculed, insulted, torn from his family, immured in a filthy jail or dungeon, deprived of his property, his honour, and his liberty, it is his bounden duty to use every constitutional means in his power to obtain redress, or to expose such unbearable acts of injustice, tyranny, oppression, and cruelty. That constitution we boast so much of, would long ago have ceased to exist, had every man acted the sycophant, and implicitly admitted the will and pleasure of those in power to be the law of the land. I am not a lawyer, but I cannot help thinking, that not a vestige of the British constitution remains, if Judges can with impunity make laws in direct opposition to Acts of Parliament,—proclaim these "the "law of the land,"—cause our property to be carried off from us by those laws, and treat us as criminals if we complain,—prohibit us from petitioning a Court of Justice for restitution of our own property,—force the employ-

ment of counsel, *and secretly lay down conditions* to those men how they are to injure and destroy causes with which they are intrusted,—charge us with crimes and offences in public Court, which, however false, we must not contradict. And, lastly, treat us as criminals in prosecutions before themselves, for complaining of such wrongs to Members of Parliament, and others; and, without the verdict of a jury, sentence us to be confined in jails and dungeons, during their pleasure. If all this can be quietly submitted to by British subjects without a public murmur, and tolerated by the Commons of Great Britain, where is the boasted perfection of our constitution, or the security of our persons and property?

However contemptuously your Lordship may now be inclined to treat public opinion, be pleased to keep in view, that, *in this case*, it was you who first made an appeal to that tribunal; and common sense, as well as judicial duty, should have pointed out to you, that the public ought either to have heard nothing, or both sides of the cause. Now, as you condescended upon *distinct charges* against me, which you said you stated for *the information of the public*, and refused to allow me a reply; F and, as your charges were injurious to my character, *and as false as they were injurious*, I maintain, without the fear of contradiction, that I have a constitutional right to make an appeal to that public, through the press,—to state the treatment I have received, and solicit their assistance, so as to enable me to bring to a proper conclusion, an investigation which deeply concerns the interest and liberty of every member in the community. In doing this, however, I disclaim every feeling of malice towards your Lordship. Unfortunately, I have been deeply injured by you,—and I must either endeavour to obtain redress, or make up my mind to loss of property and degradation of character and rank in society. This I find I cannot do;—and, on public ground, it is what I ought *not to do, if my fellow-subjects are inclined*

to support me. I shall wait six days for your Lordship's answer; and, if I do not hear from you in that time, it is my intention to print, and circulate copies of this Note, with an Address, soliciting the assistance of my fellow-subjects.

In respect whereof, &c.

(Signed) JOHN HAY.

REFERENCES to the matter contained in the preceding Note to the LORD PRESIDENT.

When the Note and Appeal referred to was laid before the public, the Court Party were active in circulating, that the one half of the statement was *not true*,—my friends believed the whole of it, but were afraid that I had made averments which would be denied, and which, although true, could not be clearly proved.—The present explanation brings this matter to the test.

A Regarding the factor, the reader is referred to Replies to the Lord Advocate, page 62 to page 71. Respecting Lord Succoth,—the date of the commencement of the action,—the numerous orders given by his Lordship,—the size and dimensions of the process,—the agents' accounts, with what is stated in my letter to Mr Russell, in appendix, page 110, clearly establishes that his Lordship ought not to find fault with what I have said. As to Mr Russell, my letter to him in the same appendix, page 105, makes his conduct intelligible enough without comment.

B What is said of Mr More, Mr Hope, Mr Miller, and Gifford, all members of *the College of Justice*, is sufficiently plain, particularly by perusing my Note to Lord President Hope in the Lord Advocate's appendix, page 71, and in various passages it will appear that Lord President Hope has always declined ordering Mr Miller to the Bar.

C In pages five and six of the Lord Advocate's complaint, it is evident that Lord President Hope was the complainer,

and that he furnished the prosecutor with materials to constitute his action. In page 86 of appendix, his Lordship, under his own hand, admits having been examined as a witness by the prosecutor, and in that action so constituted, there is conclusive evidence that he presided over the Court, and combined in his own person the conflicting functions of Party, Complainer, Witness, Jury, and Judge in his own cause.

D Regarding the witness turning round to the Crown Lawyers, that act was challenged at the time, in a crowded Court; it was of course witnessed by hundreds, the particulars have already been explained. The fact that the Judges did not deliver their opinions in public Court, and that President Hope brought into Court, an interlocutor ready written out, can also be proved by the same host of witnesses. The Act of Parliament designed to correct such an illegal procedure, was passed by William and Mary, parl. 1st, cap. 18, and is titled "act anent interlocutors." That the public prosecutor did accompany the Judges into Court from their private consulting room, cannot be denied.

E At the commencement of Lord President Hope's speech, page 114, it will be perceived that his Lordship said, he condescended upon distinct charges against me, for the information of the public, and when he had finished, I was expressly prohibited from making a reply. In two communications received from his Lordship, page 107, the fact is admitted, that he kept back and concealed from the Court my petitions when in jail, praying for

F better accommodation. On one occasion his Lordship said, that my complaint against Mr More and Mr Hope, was false, and he would not permit me to show that it was true. When I stated that I could not find a counsel who would sign a complaint against Mr Miller, he said I was stating a falsehood, for no counsel at the bar would refuse to do so,—I am ready to name four who have all refused. On various occasions, in public Court, he has

stated that I am labouring under a delusion, that my mind is impaired, that I am not a man of a sober judgment; and in his speech, pages 119 and 120, he charged me with having done an illegal act, in order to accomplish a criminal object, see my answer, pages 77, 78, and 79, in the Narrative.

After the reader has examined the passages referred to, I presume it will be admitted that I have made out my case, as stated in the preceding Note, addressed to Lord President Hope. In the Appendix to the Narrative, will be found copies of my petitions to the Court, praying for accommodation in jail,—correspondence with Lord President Hope, regarding his Lordship's speech, as delivered in Court, and concerning the said petitions,—also his Lordship's speech, as transmitted to me, with my remarks upon it.

The remainder of the publication may be termed the property of the Lord Advocate. It contains his petition to the Court, and copies of all the papers his Lordship proved I had written and printed, and on which I was condemned. I make no comment, my cause is now before my country, and with humility I subscribe myself,

JOHN HAY.

Edinburgh, 30th October 1822.

APPENDIX

TO

Narrative.

LETTER from JOHN HAY to LORD PRESIDENT HOPE.

Canongate Jail, 13th February 1822.

MY LORD,

I beg respectfully to submit to your perusal and correction the inclosed paper, which I conceive contains the substance of what you addressed to me, on several occasions, in open Court; and, as matters now stand, I presume your Lordship will admit that I am acting fairly, when I say, that if you believe what I have written does not sufficiently express the impropriety of my conduct, *as stated by your Lordship from the Bench*, I will take it kind if you will supply any omission I have made.

On the other hand, if I have stated any thing which may bear against your Lordship, and which you conceive incorrect, I pray that you will write what you think you did say, and I will either accept of what your Lordship sends me as the fact, or take upon myself the responsibility of what I state. If I have omitted any thing which your Lordship said, and what gives me an advantage, I will insert it in your own words. If no communication is made to me, the public will be able to judge betwixt us in this matter.—I have the honour to be, &c.

(Signed) JOHN HAY.

To the Right Honourable Charles Hope,
Lord President of the Court of Session.

ANSWER from Lord President Hope.

Granton, Thursday Evening.

Sir,

I received your letter with the enclosed, which I return. In some respects it is accurate; but, in others, not so, either in sense or language. This, I am persuaded, is not from design in you, but from your being unaccustomed to report speeches, and from your not being sufficiently acquainted with the subjects on which I touched in my address to you.

But I really have not time, as this is the very busiest period of the Session, to sit down to recollect accurately, and still less time to write out, what I said to you. I have been told, however, that a young gentleman at the Bar, who writes short-hand very accurately, took down my speech *verbatim*, and that he intends to send me a copy of it. If he does so, I shall have another copy of it made for you, to which you are perfectly welcome.

I also received your petition, in regard to your want of proper accommodation in the tolbooth. It is not a matter on which the Court could make any order, not knowing the state of the prison, nor what accommodation it is possible to afford you, consistently with that necessary for other prisoners. But I put your petition into the hands of the Solicitor-General, with a request that he would communicate with the Magistrates on the subject, in order that they might make the necessary enquiry, and afford you every accommodation which the state of the prison could afford.

The Court selected the Canongate tolbooth for the place of your confinement, *first*, Because it is generally preferred by debtors, and others in the rank of life you hold; and, *secondly*, Because they understand that the tolbooth of Edinburgh, on the Calton Hill, is very crowded at present. But if, on enquiry, you find you can be better ac-

commodated there, I have no doubt, that, on your petitioning the Court for that purpose, they will order you to be transferred thither.

(Signed) C. HOPE.

I need hardly add, that your paper does not contain a tenth part of what I said to you. C. H.

EXTRACT of another LETTER from Lord President Hope to John Hay, dated Edinburgh, 19th February 1822.

Sir,

I have received your letter of this day's date.—It is true that I did not lay your former petition, in regard to your complaint of want of proper accommodation in the tolbooth of Canongate, before the Court. The reason was, because the Court, as a court, could have given no other deliverance than a simple refusal, as relating to a matter not within their province. But I took the trouble (and I do not at all grudge it) to explain to you, by letter, that the accommodation of prisoners in goal is under the regulation of the Magistrates, and that I had put your petition into the hands of the Solicitor-General, requesting him to speak to the Magistrates, and inform them, that it was the wish of the Court, that you should have every accommodation which the prison could afford, consistently with the comfort of others; and that, if you preferred it, I had no doubt that the Court would grant warrant for transferring you to the tolbooth on the Calton Hill.

Canongate Jail, 22d February 1822.

My Lord President,

Your Lordship's letter, dated Edinburgh, 19th February, did not reach me till yesterday. You are pleased to say, "It is true that I did not lay "your former petition, in regard to your complaint of

"want of proper accommodation in the tolbooth of Can-
"ongate, before the Court. The reason was, because the
"Court, as a Court, could have given no other deliver-
"ance on it than a simple refusal, as relating to a matter
"not within their province."

However much I may differ from your Lordship on certain points, I am sorry, truly sorry, to observe the fearful responsibility your Lordship has, before your country, taken upon yourself, as stated in the above paragraph. The petition was addressed, *not to you*, but to the Court,—it was boxed, and came regularly and legally before you,—it was humble and respectful,—it was from one whom the Court had deprived of liberty. The petitioner did not complain of the sentence, or ask for liberty, but he prayed for such treatment as might not deprive him of life; and by your own admission, you kept back that petition from the Court, because, forsooth, your private opinion was, that the Court would refuse it. Has your Lordship a power and a right to keep back from the Court any petition which you may conceive will be refused by the Court? Allowing that the Court had refused the prayer of the petition, and that it had been sent back to me as refused, I would instantly have forwarded it to the House of Commons, with your signature of refusal annexed to it, and on that refused petition, my friends there would have founded a motion of enquiry. But, by keeping back that petition, and writing me that you did so, a motion of enquiry cannot be founded on a refused petition, but must be founded on your own letter, and against you as an individual, for withholding my petition from the Court. Could I regulate my duty to my inclination, believe me, my Lord, this matter would never go farther. But the Lord Advocate, and the Court having drawn the sword, and thrown away the scabbard, I have no alternative left me, but to resist constitutionally, and avail myself of every advantage which Providence is

pleased to place within my reach, in this unequal contest.

The petition which was kept back from the Court, is as follows:—

Unto the Right Honourable the Lords of Council and Session; the Petition of JOHN HAY, presently prisoner in Canongate Jail;

Humbly Sheweth,

That the petitioner was by warrant signed by the Lord President, bearing date the 2d current, sentenced to four months confinement in this jail, on a complaint brought against him before your Lordships, by his Majesty's Advocate.

The petitioner is sorry to trouble your Lordships, but he has been advised to inform you, that he is suffering from want of fresh air,—that the prison is much crowded,—that he has no apartment or room he can call his own,—that he is allowed neither coal, candle, nor victuals of any description; and had he not been permitted to take shelter in the keeper's apartment in the mean time, he would have been under the necessity of sleeping and associating with the very refuse of society.

May it therefore please your Lordships to take the petitioner's case under consideration, to order him a proper apartment, or room, and such a sum for his support, as to your Lordships shall be considered consistent with the petitioner's rank in society.

According to justice, &c.

(Signed) JOHN HAY.

CANONGATE JAIL, *9th Feb.* 1822.

This is the petition your Lordship now admits you kept back from the Court, but this fact I did not know

until your Lordship informed me; accordingly, on the 14th current, I transmitted to Mr Weddel, the clerk of the Inner-House rolls, a second petition, of which the following is a copy:—

Unto the Right Honourable the Lords of Council and Session; the Petition of JOHN HAY, presently prisoner in Canongate Jail;

Humbly Sheweth,

That the petitioner, who is at present your Lordships prisoner, did, on the 9th current, present a petition to your Lordships, stating that you had sent him to this jail, without making any arrangement for his accommodation, and that unless he had been permitted to shelter himself in the keeper's apartment, he would have been under the necessity of sleeping and associating with very unpleasant society.

It gives the petitioner much pain to say, that no deliverance has been made by the Court on that petition, or any communication whatever made to him from the Court.

The petitioner considers it his duty to inform your Lordships, that he has obtained possession of an apartment, which, on *first inspection*, he thought he could *exist in*, but yesterday's rains convinced him of the contrary. It is a place ten feet by ten feet two inches, from which space is to be deducted the room of a bed; the window is just two feet by eighteen inches; old matts are nailed on the wall to keep out the cold, and yesterday the rain came down from the roof, destroyed the bed, and overflowed the place.

The petitioner humbly entreats that your Lordships will be pleased to send down from the Court some respectable person to inspect the place, that from his report your Lordships may be fully satisfied respecting the correctness of what the petitioner has stated.

May it therefore please your Lordships to order a person direct from the Court, to inspect and report, and provide the petitioner with an apartment he can sleep in, without the rain pouring down upon him; and further, to give a deliverance upon his former petition.

According to justice, &c.

(Signed) JOHN HAY.

CANONGATE JAIL,
14th February 1822.

This second petition was also kept back from the Court, and returned to me in the most contemptuous manner, under a blank cover, by the penny-post, the address on the cover is in the hand-writing of your Lordship's clerk. The result is what you cannot be surprised to hear. I have been seized with violent rheumatisms in my shoulders and sides,—and at one time I was seriously threatened with an inflammation, and was advised to call in a surgeon. I am now ordered to discontinue sleeping on the bed, and since that time I sleep on chairs before a fire.

The manner in which your Lordship has been pleased to dispose of my petitions from this jail, and the complaints under which I am now labouring, have given serious and painful alarm to my relations, and produced on the mind of some of my friends an opinion of your Lordship and of your motives towards me which I abstain to mention. I have had the honour to receive from you two letters, in which you endeavoured to impress upon me, that the Court cannot give me relief, and that you did me a personal favour in sending my petition to the Solicitor-General. That individual appears to have transferred the business to Mr Rolland, the Crown Agent, and he in turn has referred me back to the Court. *There must be some mistake here, or some pitiful juggling,*—your Lordship kept back my petitions to the Court, praying for aliment and for accommodation,—you admit corresponding with

my prosecutors on the subject without the sanction of the Court; and this day I have received a letter from the Crown Agent in answer to mine of yesterday, of which the following is a copy:—"Sir, I have received your "letter of this day's date, and I have in answer to men- "tion, that if you wish to be removed from Canongate to "the Calton jail, or if you consider yourself in such cir- "cumstances as to be entitled to aliment, it will be neces- "sary for you to apply to the Court of Session for these "purposes.—I am, Sir, your most obedient Servant.

(Signed) "ADAM ROLLAND."

To Mr John Hay, Jail of Canongate.

I respectfully entreat your Lordship will be pleased to adopt such measures as will embrace the prayer of my petitions to the Court, that such apartments may be provided for me as will not injure my health during my confinement, and such a sum allowed me per day as to your Lordship and the Crown Lawyers shall seem reasonable, under the circumstances of the case.

I have the honour to be,

My Lord, your Lordship's

Most obedient and very humble servant,

JOHN HAY.

P. S.—I am much in want of the speech your Lordship so politely offered to send me. May I ask the favour of your clerk soliciting the gentleman for your copy, from which I am to obtain another.

Note.—I never obtained better accommodation during twenty two weeks close confinement. The roof of the prison, it is true, was repaired as soon as possible, and the most marked civility, kindness, and attention, was observed to me during the whole period of my confinement by the Magistrates of the Canongate, and by Mr

Aitken, the keeper of the jail, which kindness I publicly and gratefully acknowledge.

Lord President Hope has said much regarding his anxiety to serve me in keeping back my petitions from the Court. But the conviction on the mind of my friends appears to be, that my petitions were kept back in order to force me by bad accommodation and bad health, to make an apology, and to pray for liberation. This would have injured my character, destroyed my cause in the Court, and ruined my family; but it would have served his Lordship, by effectually preventing Parliamentary enquiry into the wrongs I had suffered. When Mr Rolland, the Crown Agent, called upon me in jail, he also mentioned the President's *friendship*, and advised me to make an apology, and I would be liberated. The reader will perceive the expressions of politeness and candour in the following Cards, and how anxious his Lordship was to convince me of "*the error of my ways*;" but perhaps the "prejudiced and infatuated state of my mind" prevented me from profiting by the subsequent communications from his Lordship.

CARD from Lord President Hope to John Hay.

Granton, 28th February 1822.

The Lord President's compliments to Mr Hay. He has now received a copy of the short-hand notes of his address to Mr Hay, of which, as soon as he has had time to revise and correct it, and to have a fair copy of it made, he will send a copy also to Mr Hay. But at this, the most hurried period of the whole year in the Court of Session, it will be some days before he can overtake it. He thinks, however, that he will be able to let Mr Hay have his copy by Monday or Tuesday.

Granton, 4th March 1822.

The Lord President's compliments to Mr Hay. He now sends him his speech, as taken in short-hand, and

with some trifling corrections which it was necessary to make on it. He believes it to be almost *verbatim*, as he delivered it. He is certain that it does not vary on any essential particular.

As his Lordship could not have the benefit of his clerk down here, he was obliged to copy it with his own hand. This, however, he does not regret, as he hopes that an attentive consideration of it will give Mr Hay a very different view of some points than he had before.

NOTES of the Lord President's Speech to Mr John Hay.

Sir,

I beg to inform you, that the Court having maturely considered the petition and complaint, with the proof, together with the note or minute, which you publicly read, are unanimously of opinion, that the complaint is relevant and proven, and have directed me to announce to you the judgment, which I shall hereafter read.

In the mean time, it is proper, but I am afraid that your mind is so prejudiced and infatuated on this subject, that what I am going to say will be of little use to you; *but for the audience here, and through them to the public at large*, it is proper to explain the nature of the offence of which you have been guilty.

You have, in a variety of letters, and other publications, in Court, and out of Court, libelled and insulted this Court, and several of the Judges of it, in a variety of particulars.

But, *First*, let me examine the grounds of your complaint against us.

Your first ground of complaint is, that by the Act of Sederunt 1789, enacting, that all papers given into Court shall be signed by counsel; this Court has invaded the liberty of the subject, and deprived you of a privilege, to which by law you are entitled.

Now, Sir, I have to inform you, (and it is strange that you, and your advisers, who have written so much on this subject, should be ignorant), that the Act of Sederunt 1789, is not the only nor the first Act on that subject.

As far back as the year 1710, an Act of Sederunt was passed to the very same effect, which is founded on, and explanatory of an Act of the Parliament of Scotland, on the same subject. This is the Act 1695, and I shall now read to you the Act of Sederunt 1710.

Therefore, Sir, the Act of Sederunt 1789, was no usurpation of authority, by our immediate predecessors in this Court. It was founded on the Act 1710, and that act again was founded on an Act of the Parliament of Scotland.

But further, Sir, I have good reason to believe, that, on enquiry, you will find, that the very same regulations takes place in all Courts of Record at Westminster, from the House of Lords downwards.

That Honourable House does not receive any petition of appeal, or appeal case, unless it be signed by counsel; nay, if I recollect, it must be signed, I mean a petition of appeal, by one of the counsel in the cause, in the Court below, and in my time (I do not know whether it is the rule now), but in my time, that House went a step further, and insisted that one of the counsel formerly in the cause, should plead the appeal. And I remember one instance of this rule being enforced, in the case of the present Lord Chief Commissioner Adam.

So that, even in the Courts in Westminster Hall, although a party, if he chooses, may plead his own cause *viva voce*, every paper which forms a part of the record, must be drawn and signed by a practitioner before the Court.

Therefore, Sir, you see that the regulation of this Court, in their Act of Sederunt 1789, is in unison with that of the courts of law in London.

Your next ground of complaint is, that this Court has taken upon it, by the Act of Sederunt 1730, to repeal the Act of Parliament 1672, regarding tutors. But that, Sir, is not the case. The Act of Parliament 1672 remains in full force, and is the rule by which tutors are obliged to act and account with their pupils at this day. But the Act of Sederunt 1730 was passed for the regulation of the conduct of factors to infants, who have no tutors.

It too frequently happens, that parents die without naming tutors to their children, and when they do name them, the persons named often refuse to act.

Now, Sir, in regard to your wife's family, how stands the fact? Your wife's father died, leaving a family of infant children. He named no tutors in his will. Is this Court to be blamed for that?

What next? The nearest male relation by the father's side might have served himself tutor-at-law. But he did not choose to do so. Is this Court to be blamed for that?

What next? The mother and other relations of the infants, might have made application to the Court of Exchequer for the appointment of a tutor dative. But this was not done; and so those infants were left without tutors of any kind. Is this Court to be blamed for that?

None of these things having been done, and these children being left totally helpless, with large farms to manage, which they could not do themselves, and which no unauthorised person could do for them; for, although such person might assist the agricultural operations, he could not dispose of the produce, as no person could, with safety, pay the price of it. In this situation, I say, of total helplessness, your wife's mother, with the express consent of some of her childrens nearest relations, applied to this Court to appoint a *factor loco tutoris* to them.

Accordingly the Court did appoint such a factor. And whom did they appoint?—A person of their own choos-

ing?—No. They named, as they always do, if no objection is stated against him,—they named, I say, the very person recommended by your mother-in-law and the other relations, and who is thus described in the petition (I read the very words of it) as one "in whom we have *peculiar* "confidence."

And this man, Sir, you have been so absurd as constantly to describe as a creature and favourite of the Court; and to charge the Court with having seized on your wife's fortune, by means of a creature of their own, contrary to law.

This factor was, of course, to govern himself, not by the act of Parliament 1672, which applies only to tutors, properly so called, but by the Act of Sederunt 1730; and so your wife's relations, and their advisers, must have known, when they applied for his appointment; and therefore can have no reason to complain of that act, with a view to which their application to the Court was made.

The Act of Parliament 1672 is, in many respects, an excellent act, and was passed by our Parliament with the most benevolent views. But, unfortunately, the regulations of it are so strict, and the penalties so severe, that the act tended to defeat itself, by deterring people (especially those who could not afford the advice of counsel and agents to direct them through the different forms required by it) from accepting of the office of tutor. The consequence was, that many children were left without any guardians at all, and their relations were under the necessity of applying to this Court to appoint *factors loco tutoris*. This Court soon found it necessary to lay down certain rules for their guidance; and, with that view, framed the Act of Sederunt 1730, which contains very wise and salutary regulations.

But, Sir, it must be obvious to every one, that, had the Court made their regulations the same, or as strict and severe, as those of the Act of Parliament 1672, the consequence would have also been similar, that few persons

ted to act as factors under it, and thou-
uld have been left totally unprotected.
such factors to adhere to those regu-
duty of the relations of the children
n, and at whose desire they are ap-
that they do adhere to them. It is
urt can do so, both from the im-
number of such factories, and their total ignorance of the affairs and estates of the pupils; and, above all, from their other official avocation. It was recommended by the late commissioners for enquiring into certain proceedings of the courts of this country, that an officer should be appointed in this Court to superintend the conduct of such factors, as well as of all trustees appointed by Parliament, to carry into effect all private Acts of Parliament. But this has not yet been done, probably because Parliament and the government think, with the majority of this Court, that the best check on such factors and trustees, is to leave it to the relations and persons interested to call them to account; and, Sir, I may here mention, what ought not a little to stagger you in your opinion of this Act of Sederunt 1730, that while thousands of children and their relations have had factors appointed under it, and derived incalculable benefit from it, you are the first person who has called in question either the legality or the wisdom of it.

Such are the grounds of your complaints against this Court; and your offence, Sir, consists in having printed, and circulated widely, a variety of defamatory letters, accusing this Court of gross injustice in the above particulars.

Some of these letters are addressed to Members of the House of Commons; but, at the same time, printed and circulated among the public. Now, Sir, I wish you to understand what is the law on this subject.

Every subject of this realm is entitled to petition Parliament, and to complain of any thing which he conceives

to be a grievance; and this petition he may send to any Member of either House, to be by him presented to that House; and, in my opinion, he is also entitled to send a private letter to that Member, explaining his views more fully, in order to enable him to support the petition; and for any thing contained in such petition and private letter he cannot be prosecuted or punished.

But, Sir, the law of Parliament itself is this, that if the petition, and such private letter be published out of doors, by the party himself, and it contains libellous matter, then the party may be punished.

In the same way, though a Member of either House of Parliament may say what he pleases in his place in Parliament, and for that cannot be called in question out of Parliament, yet, if such Member print, and publish his speech, and it contain libellous matter, either of a private or public nature, then he may be prosecuted for it, and both Peers and Commons have been prosecuted for this, before the Courts of law in England.

Therefore, Sir, you have been grossly deceived, if you have been advised, that you could escape punishment, because that which you printed, and circulated against this Court, were nominally addressed to Members of the House of Commons; while, at the same time, they are proved to have been published to the world at large, by being sent to a variety of other persons, even to one of the Reverend Ministers of this city, who could have no possible concern with you and your law-suit, and had no means in his power to give you redress, even if you were entitled to it.

These, Sir, are the offences of which you have been guilty towards this Court. But, in reference to the pure administration of justice, the worst part of your conduct remains behind,—for not satisfied with doing every thing you could to intimidate the Judges of this Court, you presumed, while your cause was in dependence before the Lord Ordinary,—you presumed to write to the account-

ant, appointed by his Lordship to examine and report upon the factor's accounts, an abusive and threatening letter, in the hopes of extorting from him a report favourable to your claims.

From which, Sir, it appears that you, who stand forward as the apostle of liberty and justice, have no just notions of either, for you seem to act, as if you thought that liberty consists in the indulgence of your own ungovernable passions, and justice in every thing being made subservient to your own interest.

What, Sir, would you have said, if you had discovered that your opponent in the cause had written similar letters, in order to influence and intimidate the Judges and the accountant? And yet it must be obvious, even to your prejudiced mind, that if *you* might do so with impunity, *he* might do it also;—and not you two only, but every party in every cause must have the same right to insult the Court and intimidate the Judges; and what an intolerable state of things this would be, and how utterly inconsistent with the pure administration of justice, every one who hears me can be at no loss to determine.

On the whole matter, therefore, the sentence of the Court is.—The reader will find the Sentence of the Court in page 44.

Remarks on Lord President Hope's Speech.

In every country, and in every age, it has been pronounced, an unjust, a mean, and a cowardly action, to condescend upon distinct charges against a man in public Court, injurious to his character, and then prohibit him from repelling such charges, *however false*.

It is said that the Act of Sederunt 1789, is founded upon one made in 1710, which was founded upon a Scotch Act of Parliament passed in 1695. This is denied, and Lord President Hope is publicly called upon to make good his averment, by quoting the words of that act, or any act of the Scotish Parliament, which empowered the Judges to legislate to the extent of invading the privileges and ancient rights of the people in Scotland. It was the practice and the law of Scotland, long before the Court of Session was instituted, for the injured party to draw and sign his own petitions, and to plead his own cause. The Statute of Parliament passed at Edinburgh, 17th May 1532, instituting the Court of Session, and the statute 1540, regulating and ratifying the procedure of that Court, distinctly secured and preserved to the injured subject the same right. These statutes, it is true, empower the Judges of the Court of Session, "to mak sic "actes, statutes, and ordinances, as thai salle think expe- "dient, for ordouring of process, and hastie expeditioun "of justice." This is what has been termed "a delegat- "ed power from Parliament to make laws." Stair and Mackenzie were Members of the Court of Session, and creatures of Lauderdale, during the corrupt ministry of Charles II. They have not only laid down as law, that which is not true, but they have maintained that Parliament *gave* to the Court of Session that which Parliament

never possessed. Parliament did not "delegate" to the Court of Session a power to legislate without control, for in the statute 1532, it is distinctly stated, that the rules and regulations framed by the Court, shall become law, *only when approved of, and ratified by* Parliament. But allowing that this saving clause had not been inserted, the effect constitutionally would have been the same. Parliament enjoyed the right of legislating, but *it did not* enjoy the right of delegating that power to Judges, consequently it follows, that laws made by Judges are not binding on the nation, unless ratified by Parliament.

But let it be supposed, that by these statutes, the Judges of the Court of Session do constitutionally enjoy to a certain extent, the right to make laws, there still remains two fatal objections to the Acts of Sederunt 1710 and 1789. *First*, It is self-evident, that the statutes 1532 and 1540, cannot confer on the Court a power to prohibit the litigants from drawing and signing their own papers, and pleading their cause; because in those statutes that right is most distinctly preserved to the litigant: and, *Secondly*, the Acts of Sederunt 1710 and 1789, have not been ratified by Parliament.

His Lordship is extremely unfortunate in his allusion to the practice in English courts. It is Scotch law, and the rights of Scotchmen, which is the subject before his Lordship. In England, the affidavit of the party is the principal record and the ground-work of all the procedure; had the Court factor sworn to all the falsehoods his counsel has written in the papers he has signed, that factor would oftener than once made an appearance on the pillory!! The Lord Chancellor, it seems, compels the counsel who draws the paper to support it at the bar; if what Mr Miller wrote his clients be correct, the reverse appears to be the practice in the Court of Session. The other parts of his Lordship's speech which require notice from me, have been already answered, see pages 53, 54, and page 76, "AND UPON THE WHOLE MATTER," if it has

so happened, that the Judges of the Court of Session caused the property of a family of minors to be intromitted with and carried off from them contrary to law; that contrary to law the said Judges prohibited those individuals from humbly petitioning for restitution of their own property; that contrary to law, the said Judges proceeded against one of those individuals, and consigned him to a jail or dungeon for complaining of such acts. If all this can be established, perhaps Parliament will pronounce these proceedings to be what I will not name.

J. H.

THE

Petition and Complaint

OF

SIR WILLIAM RAE OF ST CATHARINE'S, BART. HIS MAJESTY'S ADVOCATE, FOR HIS MAJESTY'S INTEREST,

AGAINST

JOHN HAY.

Humbly sheweth,

THAT the petitioner considers it to be his duty, as Public Prosecutor, to present to your Lordships this petition and complaint against John Hay, now or lately baker in Edinburgh. The offence of which the petitioner accuses the said John Hay, consists in his having wickedly defamed, calumniated, and libelled several of the Judges of this Supreme Court, and the administration of justice in relation to the proceedings of the Court in certain conjoined actions still depending, in which the said John Hay is a pursuer, and William Scott, now or lately accountant in Edinburgh, *factor loco tutoris* for the children of the late Robert Cranstoun, tenant in Crailing Hall, is the defender.

Of the merits of these actions it would be improper for the petitioner to say any thing, and even of their particular nature it is unnecessary for him to give any detail. He

may, however, state in a few words, that, in the month of February 1798, Robert Cranstoun tenant in Crailing Hall, died, leaving six daughters and a son. Two of the daughters only had attained the age of majority, and of the remaining part of the family one daughter and the son were in pupillarity.

Mr Cranstoun had not made any nomination of tutors or curators for his children, consequently the charge of the affairs of the pupils devolved on the tutor at law, if he chose to enter upon the office. The aforesaid William Scott was the nearest agnate, or nearest male relation on the father's side, and consequently, would by law have been entitled to have entered upon the office of tutor if he had attained the age of twenty-five, prescribed by the act 1474, cap. 51. But Mr Scott, though major, had not attained the age of twenty-five. No other relation of the deceased, to whom the office of tutory was competent, assumed that duty, and no one can be compelled to undertake it. The law of Scotland recognizes tutors nominate or testamentary, tutors of law, and tutors dative; and it appears that in the present instance, the first class, viz. tutors nominate or testamentary, did not exist from the fault of the deceased; that the second class, viz. tutor of law, would not assume the office, and that no one applied to the proper jurisdiction for an appointment under the last class, viz. tutors dative.

In this situation, the provision of the law of Scotland is well known to the Court. (Erskine, B. i. tit. 7. sect. 10.) "That pupils may not be left entirely defenceless when "they are without a tutor or guardian of any kind, which "frequently happens if their affairs are involved, a factor "or steward is in such case named by the Court of Ses"sion at the suit of any kinsman of the pupil for the ma"nagement of his affairs, which factor must conduct him"self by the rules set forth by the Act of Sederunt, Fe"bruary 13th 1730."

Of this beneficent provision—which does not interfere

with the rights, duties, and obligations of any of the classes of legal tutors—which merely remedies the inconvenience arising from the total want of them, and which may be superseded immediately, and at any time by any of those persons, who, under the legal title of tutor nominate or testamentary, of law, or dative, may assume the office,—the family and relations of the late Mr Cranstoun appear to have availed themselves. An application for the appointment of a factor *loco tutoris*, was made in name of the four daughters of Mr Cranstoun who were above pupillarity, but under majority, and who were by law entitled to chuse their own curators; also in name of the daughter and son who were in pupillarity, and likewise of their mother, and two of the nearest male relations of the deceased, viz. the Reverend Andrew Bell, minister of the gospel at Roxburgh, and Robert Bell, farmer at Little-Dean-Lees.

All these persons concurred in petitioning your Lordships to appoint the said William Scott, (petition for the appointment of the factor *loco tutoris* 1798), "on whom "the office of tutor to those under puberty would fall, "and in whom the family have peculiar confidence," and whom they further represented as "a person of integrity "and ability for executing that office," to be factor *loco tutoris* for the children; and the application was supported by a letter signed by Mr Cranstoun's widow and the two relatives of the family already mentioned, strongly recommendatory of Mr Scott. Your Lordships, according to the practice always followed on such occasions, appointed the application to be intimated by publication on the walls of the Court; and thereafter, having resumed consideration of the application, and no objection having been stated from any quarter, you granted the prayer of the application, by appointing Mr Scott to be factor *loco tutoris* (March 7th 1798,) to the children in minority and pupillarity, on his finding sufficient security in common form.

One of Mr Cranstoun's daughters afterwards married John Hay, now complained upon, who, in consequence of

his marriage, came to have an interest in the estate of the deceased Mr Cranstoun, and a right to enquire into Mr Scott's management as factor.

It would appear that Mr Hay was dissatisfied with the conduct of Mr Scott, for of this date (Dec. 12. 1809,) there was presented to the First Division of the Court, a petition and complaint in name of Mr Hay and his wife, against Mr Scott, complaining of his management; and particularly of his having disregarded the injunctions of the Act of Sederunt 1730, relative to the lodging of factory accounts at regular periods. To that petition and complaint, Mr Scott gave in an answer,—he also lodged accounts; and, after some further procedure, your Lordships remitted to Lord Succoth to hear parties, and to do as he should see cause. Actions of count and reckoning were also raised against Mr Scott, at the instance of the said John Hay and his wife, and others of the daughters of Mr Cranstoun and their husbands. These actions were likewise remitted to Lord Succoth, and the whole were conjoined. A good deal of procedure in these conjoined actions took place before Lord Succoth, and several interlocutors were pronounced by his Lordship. The cause was likewise brought repeatedly before the First Division of the Inner-House, in consequence of petitions having been presented against the interlocutors of the Lord Ordinary on particular points, and also in consequence of notes and petitions irregularly presented for John Hay and others of the pursuers. Some of these were not even signed by counsel, although it is a rule of Court, and, indeed, is expressly enjoined by Acts of Sederunt passed upon the narrative of the evils which had resulted from an opposite practice, that all written or printed pleadings, that is to say, all pleadings forming part of the record of Court (for every party is entitled to plead his own cause *orally* at the proper stage for doing so), shall be signed by counsel, who are held responsible to the Court for their contents. This principle is believed to be acted upon in all courts of record throughout the kingdom.

It would appear that John Hay complained upon, was dissatisfied with the conduct of his counsel and agent in the cause, and also with the proceedings of the Lord Ordinary and the Court. He wrote and transmitted several letters and notes to the Lord President, to some of the Judges, and to other persons, reflecting in the most improper manner, not only on the conduct of his counsel, but on the conduct of the Lord Ordinary and of the Court, and on the administration of justice. He even wickedly caused to be printed and circulated, a variety of letters and other papers, containing the most false and injurious charges against the Court, and the Judges thereof, in relation to the proceedings in the said conjoined actions.

This criminal conduct on the part of the said John Hay was carried on for a considerable course of time, particularly in the year 1820. At length, in November of that year, in presence of the whole Judges of both Divisions assembled, there was produced by the Lord Justice-Clerk, and handed to the petitioner some of those calumnious and libellous productions which had been transmitted to his Lordship. The petitioner consequently directed an investigation to be made into the circumstances connected with the offence; and being hopeful that the friends of John Hay, complained upon, would, in consequence of that investigation, have prevailed upon him to desist from further offence, the petitioner delayed presenting any complaint against him. In this expectation the petitioner was disappointed. The sederunt book of the Court of Session contains the following entry, under date 14th November 1821:—"The Lords of both Divisions of the Court "being convened, the Lord President laid before their "Lordships, four letters addressed to, and received by "him, from John Hay, baker in Edinburgh, bearing re-"spectively the following dates, viz. 13th, 18th, 24th, and "29th September 1821; and also copies of three letters "from his Lordship to the said John Hay, dated re-"spectively the 14th, 21st, and 25th September 1821;

" which letters, and copies of letters, their Lordships di-
" rected should be put into the hands of his Majesty's
" Advocate, and recommended the same to his considera-
" tion; and the said letters, and copies of letters, were
" accordingly delivered to the Lord Advocate personally
" present in Court."

(Signed) C. HOPE, *I. P. D.*

Even subsequent to that proceeding, the said John Hay has persisted in the same course of conduct; and has put or caused to be put, into the box of the Lord President, a note containing most improper reflections against the Court and the Judges, and a paper, purporting to be a copy of a letter to Mr Claud Russell, accountant in Edinburgh, to whom the said actions, or certain branches thereof, had been remitted by Lord Succoth, containing reflections of a similar nature. It appears from the record of Court that, of this date, the following procedure took place:—.

Edinburgh, 30th November 1821.

" The Lords of both Divisions being convened, and
" John Hay having appeared personally at the Bar, the
" Lords, considering that the said John Hay has not, in
" his declaration above written, acknowledged the au-
" thenticity of the copy of the letter to Mr Claud Russell,
" remits the said letter, or copy of a letter, together with
" Mr Hay's note to the Lord President, his declaration,
" and all other papers connected with this matter, to the
" Lord Advocate, that his Lordship may consider the
" same, and take such steps as to him shall seem proper."

(Signed) C. HOPE, *I. P. D.*

The petitioner having considered the papers remitted to him by the Court, and having investigated the matter to which they relate, considers it his duty to present this petition and complaint against the said John Hay, to the end that he may be punished for the crime or offence which he has committed. That offence, as already stated,

consists in the having wickedly defamed, calumniated, and libelled the administration of justice, and the Judges of this Supreme Court, in regard to their conduct and proceedings in a depending action or actions in which the said John Hay was a party. The petitioner has printed, in the form of an appendix, copies of the different letters and documents, by the writing, printing, and publishing of which, this offence was committed. From these it will be seen, that the accusations of the said John Hay are of the most gross and injurious nature, calculated to bring the Court and the administration of justice into hatred and contempt, and are more particularly directed against the Lord President, Lord Succoth, Lord Balgray, and Lord Hermand.

The said John Hay is charged with having written and transmitted, or caused to be written and transmitted, to James Weddell, clerk to the Lord President, the letter No. I. of Appendix, containing the most calumnious and injurious accusations against Lord Succoth, on account of a judgment pronounced by him in the said conjoined actions; and particularly the following passage:—"I entreat you will be pleased to make my humble respects to his Lordship, (the Lord President), and say, that I am ready to explain to him, that, in consequence of a late judgment pronounced by Lord Succoth in my case, all hopes of bringing it to a termination have now disappeared, *as the judgment his Lordship has pronounced is capable of no other construction than to aid and assist the factor* in keeping my case in the same unfinished state before Lord Succoth, so long as his Lordship remains on the Bench; or, as his friend Mr Boswell expresses it, 'during his lifetime.'"

The said John Hay is charged with having written and transmitted, or caused to be written and transmitted to the Lord President, the writing No. II. of Appendix, purporting to be the copy of a letter, or part of a letter, to C. W. Wynne, Esq. M. P. containing the most calum-

nious and injurious accusations against the Lord President, in his official capacity, and against the Court, and the administration of justice. The following is one of the many passages of that description, contained in this writting:—"But this, Sir, is not a case of feeling merely; it "is one of right, and of public justice, in which Parlia- "ment, and the country at large, are deeply concerned. "*And if President Hope will take it upon him thus to de-* "*prive the subject of his rights,*—to hold up the statutes "of Parliament to public contempt,—and declare Acts of "Sederunt to be the laws of the land,—let it be at his "peril that he does so. Every loyal and patriotic indi- "vidual throughout the land must, indeed, feel alarmed, "when it is known that such Radical notions are entet- "tained by our Judges, and openly promulgated from "the Bench whereon they sit."

The said John Hay is charged with having written, printed, and published, or caused to be written, printed, and published, the letter No. III. of Appendix, addressed to Joseph Hume, Esq. containing many most injurious and calumnious reflections against the Lord President and the Court, and the administration of justice in Scotland.

The said John Hay is charged with having written, printed, and published, or caused to be written, printed, and published, under the title "Appendix," the four writings forming No. IV. of the Appendix to this petition, and consisting of, 1*st*, A letter addressed to the Lord President; 2*d*, A letter addressed to Lord Balgray; 3*d*, A letter addressed to the Lord Advocate; and, 4*th*, An extract from a petition for Alison . . . Hay, and John Hay, for recal of the Act of Sederunt 1789, and containing throughout the most injurious and calumnious charges and accusations against the Lord President, Lord Balgray, Lord Hermand, and Lord Succoth, and the most unjust reflections on the whole Court, on account of judgments pronounced in the said actions. The letter addressed to Lord Balgray contains the following pas-

sage :—" In the reclaiming petition, the act of Parliament 1672 was unfortunately taken notice of. This put Lord Hermand and the whole Court into a rage. His Lordship railed against the petitioners,—the evidence was disregarded,—the case was given again against the executors, with heavy expenses,—and you, my Lord, forgot to redeem your pledge.

" This decision has hitherto appeared incomprehensible to every lawyer and gentleman who has studied the case. They say, that the interlocutor of the Lord Ordinary is not conformable to either law or justice, in respect that it gives the factor credit for money said by him to have been disbursed, and vouched by no other evidence than his own assertion.

" I have been told that the confirmation of the Lord Ordinary's decision by the Court, has established two points of law, and that to maintain those positions before the House of Peers, would disgrace the lips of an idiot."

The said John Hay is charged with having written, printed, and published, or caused to be written, printed, and published the letter addressed to the Lord President, which forms No. V. of the Appendix hereto annexed, and containing the most injurious reflections on the said Lord President in his judicial character, and on the court and the administration of justice.

The said John Hay is charged with having written, printed, and published, or having caused to be written, printed, and published, the letter to C. W. W. Wynne, Esq. M. P., No. VI. of Appendix, containing throughout the most calumnious and injurious charges against the Lord President and Lord Succoth, and the whole Court, and administration of justice in Scotland. The attention of your Lordships is particularly directed to the following passage, near the end of that letter :—" I have had my " property carried off from me contrary to law,—*contrary* " *to law I have been prohibited from humbly petitioning that*

" *it might be restored*,—I have been grossly insulted at " the bar of justice,—I have been told before a public " audience, that my mind is impaired,—that I am not a " man of a sober judgment,—and that, if ever I again pre- " sume to trouble those *who caused my property to be car- " ried off*, I will be *considered a criminal, and will by them " be treated as such*. Should the day ever arrive, when " the Commons of Great Britain judge it their duty to en- " quire into the conduct of President Hope and Lord Suc- " coth, perhaps the House, in its wisdom, may consider *that " the one has degraded the dignity of justice, and excited a " spirit of discontent and dissatisfaction in the minds of " the public; while the other, perhaps, may appear to that " House to want that capacity of intellect and firmness of " mind which is requisite in a Judge*. Strong measures " may be considered just and due to the public, but this, " you will perceive, is no relief to me."

The said John Hay is charged with having written, printed, and published, or having caused to be written, printed, and published, the note for Alison Cranstoun Hay and John Hay, No. VII. of Appendix, containing injurious reflections on the Court and the administration of justice, in relation to said actions; and particularly therein asserting, that " the whole procedure appears to be *tainted*."

The said John Hay is charged with having written and transmitted, or caused to be written and transmitted to Lord Succoth, the letter No. VIII. of Appendix, and the note No. IX. of Appendix, and containing injurious and calumnious accusations and charges against his Lordship and the other Judges of the Court, and the administration of justice in relation to the said actions.

The said John Hay is charged with having written and transmitted, or caused to be written and transmitted to the Lord Advocate of Scotland, the letter No. X. of Appendix, containing injurious and calumnious reflections against the Lord President and the administration of justice.

The said John Hay is charged with having written and

transmitted, or caused to be written and transmitted to the Reverend Andrew Thomson, one of the ministers of Edinburgh, the letter No. XI. of Appendix, containing in the following passage the most injurious reflections and accusations against the Lord President, on account of his judicial conduct. "When a British subject has been *abused, insulted, and oppressed, as I have been, by the Lord President of the Court of Session*, I do humbly think, that it is his duty to make his wrongs known to the public. Every act of *oppression and injustice in a court of law* against an individual, is an encroachment on the rights of the community; and if the public allow that individual who maintains his rights to be ruined and made a victim of judicial resentment, they may soon, perhaps, have few rights to boast of."

[The letter to Adam Rolland was neither proved, nor attempted to be proved, of course the paragraph regarding it is not inserted.]

The said John Hay is charged with having written and transmitted, or caused to be written and transmitted to the Lord President, the letters Nos. XIV. XVI. XVIII. and XX. and the card No. XXI. of the Appendix, each, and all of them, containing language highly disrespectful to the Court, and the most unjust and injurious reflections on the judicial conduct of the Lord President, and on the administration of justice.

The said John Hay is charged with having written, or caused to be written, and having put, or caused to be put, into the box of the Lord President, the note No. XXII. of Appendix, and a copy of the letter to Mr Russell, No. XXIII. of Appendix, both of them highly disrespectful to the Court, and injurious to the administration of justice.

These things were done in Edinburgh at different times, in the course of the years 1820 and 1821, and of and con-

cerning, and in relation to, the said actions to which the said John Hay was a party, and while the same were in dependence in this Court. If the facts above set forth are denied, the prosecutor is ready to establish them by proof.

May it therefore please your Lordships to consider this petition and complaint, and to order it to be served on the said John Hay, and ordain him to appear personally in Court, to be examined on the facts above set forth; and the same being admitted, or proved, to inflict on him a punishment adequate to his crime or offence; or to do otherwise as to yous Lordships shall seem proper, under the circumstances of the case.

According to justice, &c.

WM. RAE.

APPENDIX

TO THE

PETITION AND COMPLAINT

OF

THE LORD ADVOCATE,

AGAINST

JOHN HAY.

I.

York Lane, Edinburgh, 1*st August* 1820.

JAMES WEDDEL, Esq.

SIR,

I have just now been advised to finish my letter to Mr Wynne in the press, and forward copies of all the inclosed letters to the Members of Parliament, to the clergy of all denominations in Edinburgh, physicians, surgeons, and public characters, that the abuses practised on minors, and the treatment I have received, may be generally known.

I am not insensible that such a step, when once taken, cannot be recalled; and as I have no feelings of personal resentment against the Lord President, I do think I am in common candour bound to acquaint you before I proceed further. I entreat you will be pleased to make my humble respects to his Lordship, and say, that I am ready to explain to him, that, in consequence of a late judgment

pronounced by Lord Succoth in my case, all hopes of bringing it to a termination have now disappeared, as the judgment his Lordship has pronounced, is capable of no other construction than to aid and assist the factor in keeping my case in the same unfinished state before Lord Succoth, so long as his Lordship remains upon the Bench, or, as his friend Mr Boswell expresses it, "during his life-"time."

Should the Lord President be of opinion that some method may yet be adopted, which would render an appeal to the country, and a complaint to Parliament unnecessary, I beg that it may be explained to me; and should I not hear from you, it is to be understood that this communication is by President Hope judged unworthy of consideration.

I am,

SIR,

Your most obedient Servant,

JOHN HAY.

II.

C. W. W. WYNNE, Esq. M. P.

SIR,

In addressing this letter to you through the press, I am not insensible that I address a distinguished supporter of the British constitution, one who knows well the duty of a Member of Parliament, and by whom the rights and privileges, and dignity of the House of Commons, have often been so ably and so independently maintained. It is from a deep conviction of this on my mind, viewing myself in the light of an abused and injured subject, and reflecting on the integrity and generosity of character, which attach themselves to the Legislators of our land, that I have ventured thus to obtrude myself on your attention; and, in humbly submitting the inclosed papers to your serious consideration, permit me, with all due sub-

mission and respect, earnestly to solicit the influence arising from your character and abilities, in procuring me that redress from the House of Commons, to which by law I am entitled, and which has been so long and so unjustly withheld from me by the Court of Session in Scotland.

My letter to Mr Hume will explain the treatment which on various occasions I have received from the Court, while humbly suing for justice; and my letter to the Lord President will, I humbly hope, convince you of the necessity of directing the attention of the Legislature to the statute of Parliament, made in the year 1672, for the protection of the property of minors in Scotland, and the dangerous consequences resulting to the public at large, from permitting the Judges of the Court of Session to act in a legislative capacity. By the gratuitous assumption of this power, they arrogate to themselves the privileges of holding the statutes of the land in contempt. They throw such obstacles in the way of justice, as tend to preclude the possibility of minors recovering their property when they become of age. They screen the factors which they appoint over these minors, from all shadow of responsibility, and they shut the very doors of a court of law in their face, threatening them with the most condign punishment for humbly petitioning that their property may be restored to them. "I take this opportunity to tell you, Sir," said President Hope, "that Acts of Sederunt are the laws of "the land; and if ever you presume to trouble this Court "again with such trash, (Acts of Parliament, viz.) you "will be considered a madman or a criminal, and by this "Court will be treated as such."

Blackstone has as correctly described the direful effects that would necessarily follow from Parliament allowing Judges to legislate, as if he had heard the Lord President deliver his speech. "Were the functions of the Judge," he says, "to be joined with those of the Legislative, the "life, the liberty, and the property of the subject, would

"then be in the hands of arbitrary judges." Now, those Acts of Sederunt which the President eulogises, and which are so often passed by the Court of Session, are the genuine offspring of this unnatural union of the legislative and judicial functions. And they do indeed place the lives and properties of men at the mercy of a despotic power. They are wholly subversive of all liberty and all justice, for they strike at the foundations of both. They undermine those bulwarks which our ancestors reared with so much wisdom and jealousy for the benefit of the people; and they particularly render null and void the statute of the year 1672, applicable to my particular case, and so well contrived in all its parts for checking the depredations to which the property of minors is so fatally exposed.

With great submission I do think, that nine-tenths of the abuses existing in the Court of Session, are occasioned by that unconstitutional Act of Sederunt made in 1730, by which the subject is deprived of the right of complaining, and the lawyer made sole judge in his own cause. These gentlemen of the Bar are in certain respects not much indebted to public opinion; and perhaps the Lord President himself would pause before pronouncing them more respectable than the Peers of Britain, the county gentlemen, or the clergy, yet none of these classes of men enjoy such a privilege. They can be brought into Court without their own consent, or the consent of any one member of the respective classes to which they may belong, and punished too when found guilty; but however guilty, or however criminal the conduct of a Scotch lawyer may be, he cannot be brought to justice unless he *wills* it himself, or with permission of his companions, which is nearly the same thing.

Besides all this, the Court, by that Act of Sederunt, have not only conferred on counsel an unconstitutional privilege, they have even placed the Bar above the Bench, so that the Bench have now no power of judging upon any case, or hearing any complaint, unless the gentlemen of

the Bar should be graciously pleased to permit them to see and to hear it; and no one will be so credulous as to believe, that they will ever permit the Bench to see or hear a complaint against themselves, or against those legislative proceedings which operate so powerfully to their advantage and emolument. It will be admitted on all hands, I presume, that not a single petition from the burgesses of Scotland would have reached Parliament, had they required to have been signed by the Town-Council of Edinburgh, yet, in point of honour, principle, or respectability, the characters of these gentlemen are not inferior to any lawyer of the Scotch Bar.

The circumstances of the case are materially different in a Jury Court. There the interest of the litigant and his counsel are almost conjoined. But in the Court of Session, where the same case can be brought before the judge fifty different times, and detained before him nearly as many years, their interests then become directly opposed to each other. The interest of the injured litigant consists in getting speedily out of Court, and the property claimed restored to himself and his family as the rightful owners, whereas it is the interest of agent and counsel on both sides to protract the case to an indefinite period—to bring it before the Judge in fifty different shapes—and, if possible, to thrust the whole concern into their own pockets. And should the unfortunate litigant, for whom the Court was originally instituted, but who possesses no earthly controul over these gentlemen during the process, should he ultimately discover that his cause has been lost from stupidity or deliberate corruption on their part, still he can obtain no redress—he is cut off from all hope, for no counsel will sign his paper unless he himself thinks proper; and the Judges kick his petition over the Bar, unless it be so signed. Under such circumstances, one would reasonably imagine, that no man would have the effrontery to maintain that no abuse exists.

The Lord President, however, affirms, that no abuse can exist, because the whole *body corporate*, forsooth, are so honest, so honourable, so wise, and so just, that it is not within the range of possibility for any one of their number to do wrong; and so convinced was his Lordship of their absolute infallibility, that in my case he pronounced them innocent before he had examined the evidence in support of the charges which I made against two of them. "Your charges against counsel are false," said his Lordship, "for "with such an independent bar, and with such respectable "agents, you can have no cause to complain."

I should, indeed, be the last man in the world to impute a want of candour or respectability to the learned gentlemen in general; on the contrary, I admit that there are many respectable characters at the Scotch Bar. But I ask, is it consistent with justice, that the respectability of a few should place the whole body of them beyond the reach of the law? or that all other subjects should be deprived of their rights for the avowed purpose of enriching and rendering these men absolute?

The case in which I have the misfortune to be engaged is simple in the extreme. I pledge my existence on it, that in two short hours I could state it, in all its bearings, to twelve honest jurymen, so as to enable them to pronounce a correct judgment on every point. But, in the Court of Session, the procedure is such, that, even with the aid of learned counsel, Lord Succoth will not give a final judgment in twenty years. The defender's counsel, indeed, had the impudence, a few months ago, when addressing his Lordship from the Bar, to tell him, that the case would not be finished during his lifetime. Now, if this be a fact,—if a defenceless, fatherless family, having their property taken from them when minosr, shall be refused restitution of that property for a lifetime of litigation,—if such abuses are tolerated in the Supreme Court of Scotland, I submit to you if they are not of that kind which ought to make

every Scotchman blush, and be ashamed of the country which gave him birth.

But this, Sir, is not a case of feeling merely; it is one of right, and of public justice, in which Parliament and the country at large are deeply concerned. And if President Hope will take it upon him thus to deprive the subject of his rights,—to hold up the statutes of Parliament to public contempt,—and declare Acts of Sederunt to be the laws of the land,—let it be at his peril that he does so. Every loyal and patriotic individual throughout the land must, indeed, feel alarmed, when it is known that such Radical notions are entertained by our Judges, and openly promulgated from the Bench whereon they sit. And most fervently do I hope that those guardians of our Constitution and our rights who have sent a Ferguson and a Manners to Newgate,—who have impeached a Scotch nobleman,—and grappled with a Royal Duke,—most fervently do I hope that they will not shrink from enquiring into the conduct of a Scotch Judge, who considers the laws made in his own little room as the laws of the land, and who dares, - &c. &c. &c.

III.

LETTER

TO

JOSEPH HUME, Esq. M. P.

RESPECTING THE

ABUSES IN THE ADMINISTRATION OF JUSTICE

IN THE

COURT OF SESSION,

IN CONSEQUENCE OF THE STATUTES OF PARLIAMENT BEING RESCINDED BY ACTS OF SEDERUNT OR RULES OF COURT.*

To which are added,

LETTERS TO THE LORD PRESIDENT OF THAT COURT, LORD BALGRAY, AND THE LORD ADVOCATE.

ALSO, AN

EXTRACT FROM A PETITION PRESENTED BY THE AUTHOR

TO THE

LORDS OF COUNCIL AND SESSION, Feb. 5, 1818,

HUMBLY PRAYING

For justice under the Statutes of Parliament, and for restitution of his own property, wrested from him by these Acts of Sederunt.

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* "I take this opportunity to tell you, Sir, that Acts of Sederunt are the law of the land; and if ever you again dare to trouble the Court as you have done, you will be considered a madman or a criminal, and you will, Sir, by this Court be treated as such."—PRESIDENT HOPE'S *Address to the Author.*

"Were the functions of the Judge to be joined with the Legislative, the life, the liberty, and the property of the subject, would then be in the hands of arbitrary judges.—BLACKSTONE.

"If Judges can make laws by rules of Court, the Constitution will soon be subverted; therefore it is high time for this House to speak with those gentlemen. In former times, Judges have been impeached, and hanged too, for crimes less than these; and the reason was, *because they broke the King's oath as well as their own.*"—*Mr SACHEVERELL'S Speech in the Commons, on the impeachment of Chief Justice Scroggs* (1680.)

"In the front of *Magna Charta*, it is said, 'We will deny or defer justice to no man.' To this the King is sworn; and with the oath his Judges are entrusted. I wonder what these men will say for themselves. If they have not read that law, they are not fit to sit on a Bench; and if they have read it, they deserve to lose their heads. They knew it was lawful for the subject to petition for justice, and their knowledge aggravates their crimes."—SIR FRANCIS WINNINGTON'S *Speech in the Commons, on the impeachment of Chief Justice Scroggs.*

TO JOSEPH HUME, ESQ.

MEMBER OF PARLIAMENT FOR MONTROSE, &c.

SIR,

In the last session of Parliament, when you were arguing on the abuses which existed in the Court of Session, you were pleased to state the treatment I had received from Lord President Hope. If my information is correct, the House felt extremely indignant at some of the expressions you charged the President with having used; and Lord Binning said, that if such a charge could be made out, Lord President Hope ought not to sit another hour on the Bench.

By referring to my letter of the 31st March last, in your possession, you will find I there state, that although I could fully prove that the expressions complained of were used by Lord President Hope, I had now no wish to adopt such a procedure: for I had no other object in view than to obtain justice in the Court of Session; and I was happy to inform you that appearances had become favourable for me in that Court, and that the Lord President did not now appear inclined either to deny me justice, or to insult me in humbly soliciting for it.

With such evidence in your possession, I humbly trust you will do me the justice to believe, that I would not again have troubled you with my complaints, had not my prospects darkened, and had I not received some new insult from his Lordship.

This I believe you will admit, when I inform you, that I am prohibited from stating my case to the Court, that the counsel with whom I contracted, and who received his fees, has just written one paper, and declines supporting it at the Bar, or continuing counsel in the case. The reason he assigns is, that having written that paper, he has done all that the Court *enjoined him to do*. What

am I to understand from this? Has the Lord Prseident and the Court been tampering with my counsel, by telling him to produce a paper of such a description as the *Court wishes*, and then he will be relieved from the positive engagements he entered into with me?

I will be glad to know if either promises or threatenings have been held out to my counsel by the Lord President. I will be glad to know on what legal ground my counsel and the Judges could hold private meetings together on the subject, without my knowledge and consent.

In addition to this, I have to complain, that within these few months, I have again been grossly insulted by the Lord President, at the Bar of the Court of Session. I presented a Note, complaining that a certain counsel had not done his duty. I condescended on the charges against him; and prayed that the Court would allow me to prove at the bar what I had stated in the Note. For writing this note I was ordered to the Bar, and before a crowded audience, was by the Lord Chief Justice Hope told that *I was deranged in my mind*; that I was not a man of a *sober judgment*; and that if I ever again troubled the Court with such a complaint, and in such a manner, that he would visit on my head the *heaviest punishment that it was possible for the Court to inflict.**

After a speech of considerable length, delivered by his Lordship in the most violent and *overbearing manner*, containing many expressions of wanton ridicule, contempt, and insult, I said, "My Lord, it appears to be extremely "hard to be brought twice to this bar, and distinct charges "condescended on against me, and not to be allowed to "say one word in my own defence." The Lord President saw the force of the observation; and, with a candour that did him credit, he replied, "You are at liberty "to say what you please."

* Torture is the heaviest punishment the Court ever inflicted. That punishment was common under the Stuarts, when Acts of Sederunt were the law of the land.

I then said, "Your Lordship knows that this case has "been ten years in Court, and while the blame lies with "others, the whole odium has fallen exclusively upon "me." His Lordship interrupted me by saying, "I know "nothing about your case, Sir, and if you have any com- "plaint against counsel, apply to other counsel to sign your "papers." I said, "No counsel at the bar will sign "for me a complaint against a learned brother." His "Lordship again interrupted me, by giving me the *lie* "*direct*;" he said that I was stating that "*which was* "*false*." I replied, "I was ready to prove what I had "stated," and was proceeding to do so when *Lord Her-mand*, aware that his Lordship would have the worst of it, declared that if I said one word more, he would move that *I should instantly be taken into custody*.

Now, Sir, you will perceive, that by the authority of the Court, I was ordered to the bar: that distinct charges were preferred against me, charges calculated to injure my character as a member of society, to disturb the peace of my family, and to wound the feelings of my friends.

You will also perceive, that when I offered to avert the severity of these charges, and shew that they were not well founded, I was not allowed to speak in my own defence. I was *deprived* of that justice *which slaves enjoy*, the privilege of proving that I was not guilty of the charges exhibited against me in open Court.

I therefore do humbly entreat, and earnestly solicit, that you, and other Honourable Members of the Commons, into whose hands this communication may find its way, will be pleased to bring forward the subject in Parliament, in order that an enquiry may take place, and that the facts may be ascertained, not from my assertion, but from evidence satisfactory to that Honourable House.

First, I complain that property belonging to me, and to our family, to the extent of £10,000, has been intro-mitted with, and carried off by authority of the Court of Session, contrary to the statutes of Parliament made

for the protection of minors; and that, after ten years litigation, not one shilling of that property can be recovered.

Second, I complain, that in direct opposition to another statute of Parliament, I am, by Lord President Hope, prohibited from humbly petitioning a court of law, *for restitution of property so abstracted.*

Third, I complain, that I am compelled to pay and employ counsel *over whom I have no control*; who, instead of stating my case, pronounce their own judgment upon it, advising me to take it out of Court, for in their opinion, however improper the conduct of the intromitter has been, the Court will protect him. That, at other times, they relinquish my employment in the face of a positive agreement, and assign some private arrangement they had entered into with the Court.

Fourth, I complain, that in consequence of such proceedings, and the total want of control over these gentlemen, my case has been ten years in Court, about £1500 has been spent by the parties within the walls of that Court, and that there is now less prospect of the suit coming to a termination than there was nine years ago. The process commenced with a petition of three pages, praying that a factor of Court would give in his accounts; and, at the close of ten years, instead of obtaining a settlement, a paper of no less than 400 pages, drawn by counsel, is necessary to render the ten years' procedure in the Court intelligible.

Fifth, I complain, that although positive evidence of the impropriety of the conduct of counsel has been tendered at the Bar, and a humble petition* has been presented to the Court praying that the Court, would be pleased to compel counsel to state the facts and plead to them, or allow the petitioners to state their own case, that no relief has been obtained.

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* See Appendix No. IV.

Sixth, I complain, that instead of the Court deeming such petition worthy of consideration, I was ordered to the Bar, and by the Lord President charged with having pestered the Court with folly, nonsense, and trash; that my complaints against counsel were false; and I was threatened, that if ever I dared again to trouble the Court with such complaints, I would be considered a madman or a criminal, and treated as such.

Seventh, I complain, that I am labouring under the marked displeasure of Lord President Hope, and that more conclusive evidence of this cannot be produced, than the speech of his Lordship, in which he pronounces my complaints against counsel *false*, before he had heard or seen the evidence I had to produce in support of the charge, and I do humbly think that his Lordship is the first Judge under the House of Brunswick, that has ever told *an injured subject* * that he would be considered a criminal, and treated as such, for humbly *petitioning* the Lords of Council and Session, *to be permitted to petition* a court of law *for restitution of his own property.*

Eighth, I complain, that although my case was in Court twelve months before the Duke of Queensberry died, and the law-suits resulting from that event have been all disposed of in the Court here, and a judgment pronounced in the House of Peers, yet my suit remains before the Lord Ordinary, in the same unfinished state it was in when that nobleman died: and if I complain of delay, or offer to prove that counsel have not done their duty, I am thrust back from the bar of justice, loaded with insult, and threatened with punishment.

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* "God forbid that the day should ever come, when I or any "Judge in England, or the united empire, (for now they are all one) "*should dare to take into their own hands* the right of circumscribing *a* "*single right which British subjects had; and when I speak of British Subjects,* "*I mean the whole united empire with all its privileges.*" Lord Chancellor ELDON, 20th July 1818.

Ninth, I complain, that out of £10,000 abstracted and carried off from a family of minors, only about £1200 has yet been made tangible, being the proceeds of certain bills and bonds, payment of which John Tweedie, Esquire, has, by order of the Court, recovered. That gentleman has twice intimated to me that he wishes to get free of his charge. Repeated application has been made to the Court for a division of these funds, and an equalizing scheme has been tendered at the Bar, yet the Court will not allow one shilling to be paid or divided, although it is now *twelve years* since the youngest of the family became of age.

Tenth, I complain, that although I intimated to the Lord President and the other Judges, a considerable time ago, the serious consequences that were to be dreaded from such an unprecedented delay, the factor having become bankrupt, one of the cautioners being dead, and the other an old infirm man; yet this notice was judged unworthy of consideration—and I have reason now to regret the death of the other cautioner. In all probability the suit will be abandoned, after ten years' fruitless litigation; for it would be absurd to carry on an expensive process, in order to obtain judgment against a bankrupt factor and two dead cautioners.

Eleventh, I complain, that in petitioning for justice, and restitution of property to which I have *an absolute right*, I have been grossly insulted from the seat of justice, that I have three times had to sustain the whole shock of the Lord President's resentment, that proceedings have been adopted, and expressions used, calculated for no other purpose, and capable of no other construction, than to injure my character as a member of society, wound the feelings of my friends, and compel me to relinquish my rights.

Had I either embrued my hands in the blood of my fellow subjects, or carried arms against my prince, I would not at the bar of a court of justice been treated

with a tenth part of that virulence which the Lord President has so unqualifiedly loaded me with.—But conscious that I never merited such treatment, I consider myself fortunate in *being the object rather than the author.*

In justice to his Lordship, I beg to inform you, that in charging me with insanity, he was so very condescending as to assign the cause. "You have," said he, "brooded "so much over your lawsuit, that it has evidently impaired "your mind. You are not a man of a sober judgment." Can no person discover this but the Lord President? And why should he judge upon a point not before the Court? It is a question of law and right that has always been under discussion; insanity on *either side* has nothing to do with the injustice and oppression I complain of.

I admit that a deep impression has been made on my mind by the abuses practised on minors, which I have seen and felt; such an impression as has induced me to state, according to my humble abilities, the causes of those abuses in the annexed letter to Lord President Hope. I shall now relate a few particulars of my own case, that you may be enabled to judge how far I have had reason to "brood "over my lawsuit," without taking further notice of the effect which his Lordship says it has produced.

About twenty years ago, an extensive and opulent farmer died, having made no settlement, leaving behind him a family of young female children. A certain individual petitioned the Court to be made factor, and was appointed and confirmed in possession of the estate. For reasons known to himself, and not difficult to be understood, he rendered no accounts whatever for a period of twelve years, and even then he would not account to the children, and had the audacity to dispute *in toto* their right to recover from him their property.

In his letter to me 30th June 1809, he says, "You do "not seem to be aware that, as factor for Mr ————'s "children, it is in *my option* to account to them or to the "*Court who appointed me, and under whose authority I*

"*have acted.*" And as he would not produce any statements whatever, a petition of three pages was made to the Court, humbly praying that the Court would direct their factor to lodge his accounts, and restore the property intromitted with. After ten years' litigation, and an overwhelming expense, the paltry sum of £200 was refused by the Court, on the allegation that no such sum was due by the factor.

Notwithstanding this, I have no hesitation in saying, that the estate has been plundered to a very considerable extent; and in support of this assertion I tender the following evidence: The farmer died in the spring; and, although a very considerable portion of his crop must have been disposed of during the winter, still there remained at his death no less than 98 stacks of corn in his different barn-yards; he had 84 horses, a number of cattle, and an extensive stock of sheep.

He was in easy circumstances; this is not surprising, when it is taken into view that he was an active farmer; that he had a property of his own; that the large farm on which he resided was let two years after his death at an advance of £800 per annum, and the succeeding tenant has made a fortune in it. The same may be said of other farms which he occupied. He was in the habit of lending out money at interest: The factor himself had borrowed from him £200.

Only about a twelvemonth before he died, his fortune was improved to the extent of about £3500, by the death of an uncle. This property has been realised by the factor. It consisted of the stock and crop on the uncle's farm, and money lent out at interest, as can be instructed by statements ultimately obtained from the factor.

It will no doubt be said that these are important facts, and that I ought to have stated them to the Court, and complained that counsel had not done their duty in keeping them back. I attempted to do so; and for this I was ordered to the bar, and told by the Lord President that

my complaints against counsel were *false, for with such an independent Bar I could have no cause to complain.*

After two counsel (from fear of offending the Court, or some other reason) had refused to state the facts, although both had taken charge of the case, a third counsel was found, who undertook to state every fact that could be supported by evidence. In a debate before the Judge, Ordinary, he did credit to himself and justice to his employers—he showed the property which had been intromitted with by the factor—he exposed the numerous falsehoods in his pleadings—he detected him in all his "doub-"lings and windings." The factor was present, and shewed himself displeased; this did not make matters more agreeable.

The counsel, with his hand directed the eye of the Judge to the factor, and said, "My Lord, this gentleman, "this individual—I ask your pardon for calling him a "gentleman—did trump up a large account, in his own "hand-writing, in favour of a pretended claimant, and pre-"vailed on my clients, young ladies, (himself their guardi-"an) to sign bills for this pretended debt; but instead of de-"livering these bills, so obtained, to the pretended claimant, "he put them in his own pocket, and he and his cautioner "now claim payment of them as their property. My Lord, "this man shall not escape; I shall drag him into view; "out of his own mouth, and from his own writings, I will "convict him. He has not only been guilty of legal con-"structive fraud, but, judging from the papers before me, "he has also been guilty of gross moral fraud, nay, abomi-"nable fraud."

You have now heard the factor charged with "gross "moral fraud, nay, abominable fraud;" and you have had a counsel introduced who pledged himself to prove it, a gentleman of no ordinary abilities; but, alas! he appears to have had some correspondence or communing with the Court since he made that speech, and he also declines continuing counsel in the case.

But what is a breach of trust, fraud, or even highway robbery, when compared with that of altering the laws of the land—subverting the constitution—prohibiting the subject from petitioning for justice—torturing the litigant with ruinous expence and endless litigation—protecting the guilty—and punishing the innocent for complaining of being injured?

The general opinion is, that the *Court will not punish factors.* It is said that many of the relations and political friends of the Judges hold these situations; and I have an opinion signed by two counsel at the bar, in which they in as many words advise me to take my case out of Court as hopeless; telling me, that, *however improper* the conduct of the factor had been, he *would not on that account* be punished by the Court.

I might also add, that it appears to be a general opinion, that my suit will never come to a termination. It is said that I have lost the ear of the Court, and offended President Hope and Lord Hermand, by quoting the act of Parliament 1672, complaining that counsel would not state my case, and disputing the right of the Court to rescind the statutes of Parliament.

May I beg the favour of your taking a view of the subject, as unconnected with the misunderstanding which exists betwixt the Court and the humble individual who is addressing you. Let his name and his private wrongs be banished from your thought, and confine your attention entirely to what is contained in the annexed letter to Lord President Hope. In that view, it may be considered the complaint of the widowed mother, the orphan, and the fatherless.

They are not begging charity, but respectfully soliciting protection. They are not petitioning for new laws in their favour, but complaining that although they bear their proportions of the burdens of the state, their property is not protected by the statutes, or by any law whatever. It certainly falls on those who oppose enquiry into the

abuses complained of, to show cause why the factors of the Court of Session are above the law, and why those fatherless children are below its protection. They are fellow-subjects, their tender years and defenceless situation certainly render them objects of Parliamentary protection.

I gratefully acknowledge the kindness and attention I have received from you and other honourable members of the Commons. If the subject on which I write does not in some degree plead my apology for troubling you, I am afraid I have nothing satisfactory to offer. I am however inclined to think that you have your reward in the conscious discharge of your duty to your country, and in the approbation of your own heart.

I have the honour to be,

Perth Baking Co.'s Office, Edinburgh.

IV.

(APPENDIX.)

No. I.

TO THE RIGHT HONOURABLE CHARLES HOPE, LORD PRESIDENT OF THE COURT OF SESSION.

My Lord,

Four years ago, I took the liberty of addressing a letter to your Lordship, complaining of the abuses practised on the estates of minors in Scotland, by the factors appointed on their estates by the Lords of Council and Session. I humbly endeavoured to point out the total inability of minors, when they became of age, to detect frauds, or prove the existence of their own property, as they could not produce any other charge against the factor, than what he thought proper to state against himself.

To that communication, your Lordship was pleased to make the following reply: "The Court has often had

" had reason to suspect that considerable abuses were prac-
" tised by factors to minors, and for some time had under
" consideration the possibility of some plan for prevent-
" ing them, which is not so easy a matter as perhaps you
" suppose."

" Sir Ilay Campbell also, as head of a royal commission,
" now employed in making some investigations relative to
" the fees and duties of the officers of the law in Scotland,
" is now again turning his attention to the subject, and, I
" believe, means to make a report to Parliament on the
" subject, and to him I shall forward your letter." *

Your Lordship candidly admits that one and all of the Judges had reason to suspect the existence of abuse. Indeed, there can be no difference of opinion on that point. The misconduct of factors on the estates of minors, is a secret to no man; they are become proverbial. When a factor is living freely on the estate of an absentee and spending the proceeds, it is said " that he is acting as " if the estate belonged to minors who cannot call him " to account."

Your Lordship says, the preventing of these abuses is not so easy a matter as perhaps I suppose. With great submission, it does appear to me that your Lordship would have expressed the fact more correctly, had you said, " The preventing of these abuses is *totally impossi-* " *ble* under the existing Acts of Sederunt of the Court of " Session;"—acts well calculated to aid, assist, and protect the factor in plundering the estate, and equally well calculated to prevent the minors from ever obtaining relief. But, my Lord, there is nothing more simple than preventing these frauds; and, all that is necessary, is to rescind your Act of Sederunt 1730, enforce the act of Parliament 1672, and, instead of protecting the guilty, punish them according to that statute.

The preamble of the act of Parliament 1672, with a

* 21st December 1815.

penetration and discernment the result of deliberation and enquiry, describes, with an accuracy almost prophetic, the whole evils the minors of Scotland are feeling; and every section of that statute demonstrates the collective wisdom, the sound judgment, and the parental care of the Prince and of his Parliament in correcting them.

"Our Sovereign Lord, considering the great prejudice "and inconvenience befalling to pupils and others, who "cannot provide for or defend themselves—that their "tutors or curators have *immediate access to their charter-* "*chests*, writs, evidents, and securities of their lands, sums "of money, and others belonging to them, which they "may *embezzle, suppress, or, by collusion, give up to their* "*debtors*, or other persons interested, without justification, "or otherwise having got satisfaction, there is no means "by which a charge can be made up against the said "tutors or curators, but themselves; who, when they are "brought to account, *make up both their own charge and* "*discharge*: For remede whereof, his Majesty, with ad-"vice of his estates of Parliament, statutes, ordains and "declares, &c.*

First, A correct inventory of the minor's property is directed to be made up by the factor and two of the nearest relations of the children on the father and mother's side. Three duplicates of the same are to be made out and subscribed by them—each relation to retain a copy, and the third copy to be lodged with the clerk of Court, and all countersigned by him, for the purpose, as the act declares, "*that they may not be altered thereafter.*"

Second, When any alteration takes place respecting the estate by further discovery of debts or funds realized, sums are to be added to the inventories, and the same subscribed, as aforesaid.

Third, No debtor to the estate can be compelled to

* Act of Parliament, 1672.

make payment to the factor, till he produces an inventory so subscribed, and shows that the claim is contained in the inventory, and that the debt, when recovered, shall stand as a debt against him for behoof of the minors.

Fourth, If any factor fail to make such inventories and eiks as directed in the act, he shall be liable both for intromissions and omissions, and shall have no allowance or defalcation of the charges and expenses laid out by him in the affairs of the said pupils; in respect that, as he has failed to state to the credit of the minors, sums actually received, he shall not be permitted to state to their debit, sums he may have actually disbursed, and shall be removeable from his office as a suspected intromitter.

Now, unfortunately for the minors of Scotland, they are, by the Act of Sederunt 1730, totally deprived of the whole protection wisely provided for them by this valuable statute, and which their defenceless condition so imperiously requires. The Lords of Council and Session have been pleased to make a law, called the Act of Sederunt 1730; and under the authority of that rule of Court, the whole property of the minor is intromitted with and carried off by the factor, under the sanction of the Court of Session.

This destructive Act of Sederunt declares, that the factor *himself* shall make up an inventory of the effects belonging to minors, and lodge the same in Court; of course the factor *makes up his charge and discharge*, which the act 1672 expressly prohibits. But the Act of Sederunt authorizes this method without enacting that such inventory shall be taken in the presence of persons properly qualified on behalf of the minors, or that it shall be attested by their relations, the clergymen, elders, or any other respectable persons, that it was made up in their presence, and that it contains a full and correct statement of the whole property of the deceased.

How easy is it for a factor to draw up, in his own hand-writing, a full and correct inventory in the presence of the relatives of the orphan children; and after carrying off the same with the whole property and papers, to lodge in Court a very different one, and not containing perhaps the one-half of the property? It is quite impossible for the minors, after an interval of ten or twelve years, to say if the paper lodged in Court, is the one originally made up or not. They know not to what extent their property may have been plundered, because, as the Act of Parliament expresses it, the factor is permitted and empowered to *make up his charge and discharge, without any attestation whatever.*

But this is not the only objection which occurs to the Act of Sederunt 1730. It is brought forward at the appointment of the factor, and it has the melancholy effect of lulling into a fatal security the relatives of the fatherless children; because that act declares that the factor is a servant of the Court—that the single inventory shall be lodged there—and that he shall *account annually* to the clerk of Court for his charge and discharge.

Now, as the clause enjoining the factor *annually* to lodge his accounts, is in many instances totally disregarded, it is quite evident that the effects to minors must be ruinous in the extreme, and much worse than if no Act of Sederunt had existed on the subject; for had that been the case, the relations would have made regulations among themselves, so as to have been a check upon one another, or the minor would have been protected under the statute.

Merchants, and gentlemen acquainted with business are aware how difficult it is to detect frauds in the books of bankrupts, of only three or four years standing, and make good these frauds in a court of law; and they will readily admit that it is *totally impossible* for minors to detect frauds in the statements of a fraudulent factor, who for ten or twelve years has rendered no account by which a claim can be exhibited against him.

deficiency of funds is a strong evidence against that bankrupt. He must give satisfaction to the n that point; and the real claim can be made up, *not from the bankrupt's book*, but from the books of the creditors. But there is no such *evidence* in favour of minors, who for ten or twelve years have been deprived of every voucher they were by law entitled to have had, and by which only they could make up their just claim against the factor; consequently, their situation is deplorable indeed, being reduced to the painful necessity of accepting such a statement of their property as the factor *is pleased to make up against himself*.

Considering, therefore, the defective construction of the Act of Sederunt 1730—the bringing it forward at the factor's appointment—the effects produced upon the relations of the minors—the contempt with which the factor treats it, when once appointed—and the total inability of minors, when they become of age to detect frauds, or recover property, the existence of which they cannot prove—I am fully satisfied, taking every circumstance into consideration, that the ingenuity of man could not have devised a more complete method, by which factors *loco tutoris* of the Court of Session become enabled securely to rob, embezzle, and conceal the property of minors unsuspected, undetected, and unpunished, than this Act of Sederunt, for when once the factor has been permitted to entrench himself in such a manner, and for such a time, it is not in the power of minors to dislodge him.

Had the President of the Court of Session in 1730 stated to his legislative brethren, that they had met to make a law, the object of which was to annihilate the statute of Parliament 1672, and thereby to produce patronage to the Court, by empowering the Lords of Council and Session to appoint and confirm their relations and political friends in the possession of the estates of minors, in such a manner as to enable them, without the *fear of*

detection, to plunder the fatherless, no better plan could have been adopted than the Act of Sederunt 1730.

I do not pretend to understand figures better than other men who have got a mercantile education, and who have had considerable practice in accounts; but I have no hesitation in saying, that if the Court of Session were to confirm me in possession of a moveable estate to the extent of £20,000, under the act 1730, and allow me the same liberties and privileges which other factors enjoy, that I could, in the course of a very little time, if so disposed, plunder the estate to the amount of £10,000, including interest; and that I could defy all the agents in Edinburgh, and all the counsel at the Scotch bar, to charge home upon me one single shilling; nay, what is more, I could claim my commission, and obtain it too, for having faithfully discharged my duty to the minors, and expend in litigation and expense the reversion. But under the statute 1672, I could not rob the estate without being detected.

The minors in Scotland have not only just cause to complain of being deprived of the protection provided for them by the act of Parliament 1672, but, in addition to this, they have to complain that their property is carried off from them *contrary to all law whatever*: I aver that Act of Sederunt 1730 is only a blind; I aver that the conditions in that contract are not observed by the factor, nor enforced by the Court, and that they are the contracting parties.

Your Lordship, I presume, will admit, that the property of minors, at the death of their predecessors, is really and truly their own; that it neither belongs to the factor who petitions the Court, nor to the Court which confirms such factor in the possession of the estate. It can only be intromitted with in a legal or in an illegal manner: If in a legal manner, then it must be under some positive law; and if intromitted with under a positive law, the conditions of that law must be binding on the intromitters.

If the conditions are, by the Court and factor, considered not binding, and if the factor is not punished for having violated these conditions, then the property has been carried off under a false and fraudulent pretence; or, in other words, the minor has been swindled out of his estate.

The late Lord Melville was at great pains to impress on the minds of Scotchmen, "that they lived under a constitution the envy of surrounding nations, and the wonder of the world; that they were subject *only to laws made by their own representatives in Parliament*; that the same laws protected the prince and the peasant, the poor and the rich, the weak and the strong."

These expressions have an agreeable sound in the ear, when gracefully delivered, and they make a good appearance on paper; but the theory of the British constitution is one thing, and the practice in the Court of Session is another; and I am myself convinced, from woeful experience, that neither your Lordship, nor any other Judge in the Court, can lay his hand on his heart, and take God to witness, that the property of minors in Scotland is protected according to either statute or sederunt law, or indeed by any law whatever.

My Lord, I have still further to complain, that the minors in Scotland not only have their property intromitted with, and carried off from them by authority of the Court, contrary to the statute made for their protection; that the conditions of the Act of Sederunt are not enforced, nor the penalties inflicted; but, what appears to me to be *unbearable*, they are, under another arbitrary Act of Sederunt subversive of statute law, actually prohibited from complaining to a Court of law when they become of age, and from humbly petitioning in their *own names* for restitution of their *own property*, conformable to the conditions of the contract under which it had been carried off from them, when they were children, and could not defend themselves.

Petitions so presented by plundered minors, when they become of age, have been declared unworthy of notice by

the Court; and in one instance lately, one of the parties petitioning was ordered to the bar by the Lords of Council and Session, and told, that if ever he *dared again to complain in such a manner, he would be considered a criminal, and treated by the Court as such.*

Is it, my Lord, to be endured by Parliament, that the will of Judges is the law of the land? Is the country to understand that it is now an act of criminality for minors, when they become of age, to petition the Court of Session in their *own names*, humbly praying for restitution of their *own property.*

Is this, my Lord, the glorious constitution under which we live, where the Sovereign is *sworn to deny or defer justice to no man?* where men are governed by laws made by their own representatives in Parliament? where justice is faithfully administered, to the poor as well as to the rich, to the weak as well as to the strong, to the defenceless minor as well as to the minister of state?

If application is made by the minors to agents and counsel, I affirm that they are averse or afraid to state the facts to the Court,—in some instances they have refused to do so, after accepting of their fees; and others, instead of stating the case as directed, have, contrary to their instructions, pronounced their own judgment on the merits of the suit, advising the injured party not to proceed, but take the case out of Court,—telling them, that however improper the conduct of the factor had been, *he would not on that account* be punished by the Court; and that the Court was not in the practice of regarding the conditions of the act 1730,—the very act under which the Court had confirmed the factor in possession of the estate.

In a case which came lately before your Lordship, when a family who had been minors were lamenting that their property had been intromitted with in direct opposition to a positive statute of Parliament; and that, by an Act of Sederunt, they were prohibited from humbly petitioning a court of law, praying for restitution of their own pro-

perty, your Lordship was pleased to say, "I take this "opportunity to tell you, Sir, that Acts of Sederunt are "the law of the land." In another case, when an injured subject had been wrongously imprisoned, and was pleading under the statute 1701, Lord Hermand said, "I do "not care what the act of Parliament said on the sub-"ject; because I hold that there is a power paramount "to acts of Parliament, and that *is the power of right "reason;*" and he further stated, *that his duty concurred with his feelings in wishing to throw a certain degree of ridicule on that statute.*

It is said of Montesquieu, that, on being asked what he thought of the British Constitution, he replied, "It is "one of the grandest and most perfect fabrics that ever "human wisdom devised and executed. It will, how-"ever (said he) *cease to exist,* when the representative "ceases to be a check on the executive government." My Lord, if it is now become an act of criminality to quote the laws made by the British Parliament,—and if a few individuals in the nomination of the Crown can make laws and reject the statutes of Parliament—if the members of the executive can, in the House of Commons, protect these men—and, if Parliament cannot now maintain its power, its rank, and its dignity in the state,—then, according to Montesquieu's view of the subject, the British Constitution has *ceased to exist.*

I have the honour to be, My Lord,

Your Lordship's most obedient

and very humble servant,

JOHN HAY.

Edinburgh, 3d Nov. 1819.

No. II.

TO THE HONOURABLE LORD BALGRAY.

My Lord,

I respectfully beg to call the attention of your Lordship to an opinion given by you, while a counsel at the Bar. The memorial to which that opinion refers, was laid before you by a factor of the Court; and in it, you were told that a certain farmer had become bankrupt, and gone out of the country—that five farmers, all creditors of the bankrupt, had, by permission of the landlord, taken possession of the farm—that matters stood in this situation when he, the factor, was appointed by the Court—that he had, during his management, retained the share held by the father of those for whom he acted—and the question of law for your Lordship to determine was, Whether the interest in the farm belonged to the heir or to the executors?

Your Lordship, with great perspicuity, and in a most satisfactory manner, solved the question, by taking two views of the subject. *First*, If the lease of the bankrupt had been rendered void,—if he could at no time, and under no circumstances, resume possession,—if the new tenants held equal shares in the farm—then they were farming in their own right, and that being an heritable right, the interest in the farm belonged to the heir. *Second*, If the lease had *not* been rendered void,—if the tenants were *not* dividing in equal shares,—if they were bound to cede possession to the bankrupt on obtaining payment of their respective debt from the profits of the farm, then they were farming for the bankrupt, in order to recover a debt, and that being moveable, the interest on the farm belonged to the executors.

The factor placed the farm to account of the executors, and contended, that the lease had neither been rescinded, nor did the tenants divide in equal shares. The executors objected, 1*st*, Because the factor had rendered no account

for twelve years; *2d*, Because the sum he claimed in name of loss on the farm, was unprecedented; *3d*, That there was no obligation binding him to such a ruinous concern; *4th*, That he had misrepresented the facts regarding the lease and division of the farm.

The point was tried before the Lord Ordinary. The interest in the farm was decerned to belong to the executors, and they were subjected to the claim made by the factor in name of loss on it. His Lordship's judgment was brought under review of the Court. The Judges divided on the question, Lords Succoth and Hermand were in favour of the factor, Lords President and Balmuto were on the opposite side. Your Lordship had the preponderating vote.

Your Lordship said, "if the executors could produce "evidence in support of their averments, that the lease "was rendered void, and that the new tenants did divide "in equal shares, then I would give my opinion in their "favour; but not having done so, I do think, the tenants "are farming in the right of the bankrupt, and that the "interest in the farm belongs to them."

I beg your Lordship's particular attention to this fact. It establishes three points. *First*, That your opinion when at the Bar, and your judgment on the Bench, exactly coincide. *Second*, That you pledged yourself to vote in favour of the executors, on certain evidence being produced. And, *Third*, that you forgot to redeem your pledge when that evidence came before you. The executors, after much exertion, were at last successful in obtaining possession of the evidence they had long been in search of. A reclaiming petition was lodged in Court, and, along with that petition, a copy of a decree of removal, executed by the landlord against the bankrupt tenant, *by which his right and interest in the farm ceased for ever*. Also two statements, exhibiting the operations on the farm for several years, in which all the tenants pay *equally, and receive equally*. These statements are signed by the *factor himself*.

Your Lordship will perceive that these documents completely overturned the factor's assertions; and, according to your Lordship's opinion, clearly established, and that in law, the executors could not be subjected to the loss on the farm. In the reclaiming petition, the Act of Parliament 1672 was unfortunately taken notice of. This put Lord Hermand and the whole Court into a rage. His Lordship railed against the petitioners,—the evidence was disregarded,—the case was given again against the executors, with heavy expenses,—and you, my Lord, forgot to redeem your pledge.

This decision has hitherto appeared incomprehensible to every lawyer and gentleman who has studied the case. They say, that the interlocutor of the Lord Ordinary is not conformable to either law or justice, in respect that it gives the factor credit for money said by him to have been disbursed, and vouched by no other evidence than his own assertion.

I have been told that the confirmation of the Lord Ordinary's decision by the Court, has established two points of law, and that to maintain those positions before the House of Peers, "would disgrace the lips of an idiot:" *First*, That in count and reckoning with agents, factors, or tutors, their bare and disputed assertions are to be held legal evidence of money disbursed by them. *Second*, That these assertions, *however false*, do not alter the shape of the case.

My Lord, I am hopeful that you can give a satisfactory explanation of this mysterious procedure. May I therefore beg the favour of hearing from your Lordship, which will tend to prevent the subject from being enquired into, in that assembly where freedom of speech is fully permitted.

I have the honour to be, My Lord,
Your Lordship's obedient
and very humble servant,

Perth Baking Company's Office,
Edinburgh, 3d November 1819.

John Hay.

No. III.

TO THE RIGHT HONOURABLE THE LORD ADVOCATE OF SCOTLAND.

My Lord,

About eleven years ago, I was under the necessity of applying to the Court of Session for restitution of property belonging to my wife, which the Court had placed under the management of a factor during her minority. In these pleadings I had the misfortune to quote the Act of Parliament 1672, which was made expressly for the protection of the property of minors.

This gave offence to the Court, and brought down on my head the marked displeasure of certain Judges; I have reason to believe it has been the cause of protracting my suit, and such judgments have been pronounced against me in the Court, as your Lordship said ought to be concealed, for if published, they would degrade the Judges.

About four years ago, these judgments became final by two Inner-house interlocutors upon them; and as all the parties concerned in them, as well as myself, considered them oppressive, and contrary to every principle of sound law, it was resolved to report the case in the usual way in the newspapers.

The editor of the Edinburgh Star agreed to report the case, on condition that I submitted a scroll to him, or to his law-agent, along with the printed pleadings on both sides, in order that he might satisfy himself that the scroll was candidly made up.

Your Lordship was at that time the Sheriff for the county of Edinburgh; and the Lord President having reason to believe that the decision pronounced by the Court would appear in the newspapers, instructed a certain individual to call at the newspaper offices, and also to make certain communications to your Lordship; and

on your discovering that these papers were in the Star Office, you ordered the whole to be carried off.

Your Lordship will be pleased to recollect that these papers were my property, and I will be glad to know, if your Lordship considers the power of the Sheriff to be so unlimited, as to entitle him to carry them away whenever it is his pleasure to do so in order to answer a political purpose.

My Lord, is the press of this country now, or was it then, under a censorship? and are you quite certain that you enjoy the power of preventing decisions of a public court from being reported to the public, whenever the Judges pronounce judgments they wish to be concealed, or are ashamed of? and is the instruction of the Lord President a sufficient warrant for you to carry away the property of another, under the circumstances I have described?

These are questions, my Lord, to which I am anxious to obtain satisfactory answers. The subject of itself is trifling, unconnected with these oppressive proceedings of the Court; and should satisfactory explanations be declined, I shall deem it my duty to bring the subject before the public, and complain to Parliament, so soon as I discover that your Lordship has taken your seat in that House.

I have the honour to be, My Lord,

Your Lordship's most obedient

and very humble servant,

JOHN HAY.

Perth Baking Company's Office,
Edinburgh, 5th Nov. 1819.

No. IV.

PETITION FOR RECAL OF ACT OF SEDERUNT 1789.

Which prohibits the injured subject from stating his own case.

The preceding part relates to the Act of Parliament 1672, Act of Sederunt 1730, the factor's proceedings, and the extent of the property carried off by him.

Page 17.—But of what avail is it to the petitioners to state these facts, and to plead their cause, if their petition is to be by your Lordships considered as waste paper, and judged unworthy of consideration?

The horrors of slavery can only be felt by those who know that nature designed them to be free. Had the petitioners never discovered the existence of their constitutional rights nor been taught to participate in the parental care and wisdom of their ancestors, in securing their property during their infant years, they would not have deemed their right to recover that property absolute, nor would they have pursued their object with a perseverance so unremitting, and with a determination so unwearied and inflexible. Their father died possessed of a fortune which his family was entitled to receive; and the petitioners, without any fault in them amply protected by the statutes of Parliament, have been wholly deprived of it. They have petitioned your Lordships as the guardians and dispensers of justice, under these existing and adequate statutes, for relief, and they have been humbly soliciting under your allegiances to government, that your Lordships will give the existing statutes their effect.

Your Lordships, by Act of Sederunt 1789, have conferred on counsel the monopoly of all petitions which can be presented. To allow a monopoly to be so constituted without restriction and without regulation, is an insult to

reason; it is beyond the power of any authority to confer, and it is an act contrary to law. The petitioners will be glad to know if counsel are bound to serve the subject when called upon, or if they may comply or refuse, just as it suits their conveniency, their political or pecuniary views.

The petitioners most readily admit, that counsel, in refusing to forward their views, are actuated by honourable motives. They think they can with certainty anticipate the judgment which your Lordships would pronounce; and as that judgment would be *hostile to the petitioners*, their duty binds them to refuse to sign or support a petition which would *not only offend the Court, but be unsuccessful to the petitioners.*

But while their motives are honourable, their conduct may be yet illegal. If the petitioners have a constitutional right to state their grievances in a court of justice, and counsel enjoy the monopoly of stating these facts, they, by refusing to do so, deprive the subject of his best and most valuable rights,—redress when injured.

Your Lordships will keep in view, that the present question is not what your Lordships may be pleased to grant, but what the petitioners have, by the constitution, a legal right to plead for.

Your Lordships may not be inclined to grant them relief agreeable to the statute; but, as minors, is there any statute law prohibiting them from pleading relief under it, and bring that statute under review?

Neither may your Lordships be inclined to give effect to the Act of Sederunt 1730; but can the petitioners be legally prevented from complaining of this, and contrasting it with the Act of Parliament? The same may be said of the Act of Sederunt 1789,—the Muirfield farm loss,—the commission allowed the factor,—the accountant scheme of interest, and many other points not yet disposed of.

Now, were the whole counsel at the Bar, with the Dean at their head, from the purest motives, to declare that they

could anticipate your Lordships' judgment, that every point would be refused; still it is the bounden duty of counsel to bring every point the petitioners wish before your Lordships; for, although your Lordships do not grant relief, the House of Peers may do it; but the House of Peers cannot do so unless the facts are laid before your Lordships.

The petitioners humbly hope that they have made out their case, in so far as to satisfy your Lordships that they have been injured; and, if that is admitted, it follows that they have a right to plead redress. Redress cannot be obtained unless the facts are known; and the facts cannot be known, if counsel, on the one hand, refuse to sign their petition containing these facts, and your Lordships, on the other hand, refuse their petitions because they are not signed by counsel.

As to your Lordships not granting relief on the points they may plead, that is not the present question; but what the petitioners maintain is, that as minors, they have a right to bring under review the statute 1672, the effects of the Act of Sederunt 1730, and every other point on which they think they have a right to plead, *reserving always to your Lordships, their guardians*, but not to counsel, to determine what is improper, and to what extent they are entitled to legal redress.

By this means, the petitioners would in reality obtain *relief at common law*, and enjoy the blessing wisely provided for them in the constitution, by being enabled, if so inclined, to appeal their case, by a record satisfactory to themselves, and intelligible to the House of Peers.

But the petitioners shall trouble your Lordships no farther. They have discharged their duties according to their humble abilities; and they feel confident that your Lordships will not appear indifferent to the wrongs they complain of; "for when such abuses are allowed and "sanctioned by authority, they are calculated to endanger "the public tranquillity,—to alienate the affections of his

" Majesty's subjects from his Majesty's person and go-
" vernment, and to bring into hatred and contempt the
" whole system of our laws and constitution."

May it therefore please your Lordships to take the premises under consideration; to repeal the Act of Sederunt 1789, as injurious to the petitioners, and hostile to their constitutional rights; or to instruct counsel to sign and support their petitions, but not to judge of their merits, reserving that power to your Lordships, the only legitimate Judges they are disposed to acknowledge, or to do otherwise as your Lordships may think just.

According to justice, &c.

ALISON —— HAY.
JOHN HAY.

V.

[Copy of the Letter to Lord President Hope is already quoted, see pages 31—40.]

VI.

TO CHARLES WILLIAM WATKINS WYNNE, ESQ. M. P.

SIR,

In addressing this letter to you through the medium of the press, I am not insensible that I address a distinguished supporter of the British constitution,—one who knows the duty of a Member of Parliament, and by whom the rights, privileges, and dignity of the House of Commons have often been independently maintained. Viewing myself as an abused and injured subject, whose wrongs can only be enquired into and redressed by that

House of which you are a distinguished member, I have ventured to submit my complaint to your consideration, in the humble hope, that you, and other honourable members of the Commons will be pleased to adopt the necessary measures, in order that the truth of the charges which I prefer may be ascertained, not by my individual assertion, but by evidence competent to substantiate them.

My complaint is directed against the Judges of the Court of Session. I complain of them for having virtually *repealed* an important *Act of Parliament*, passed in the year 1672, for the protection of the estates of minors in Scotland, and for having substituted in the place of it, an *Act of Sederunt*, or rule of Court, destructive of the force and effect of the wise enactments of that statute, and calculated to deprive minors of the protection afforded them by law. I complain, that in consequence of this *repeal* of the statute, and this *unconstitutional enactment* of the Judges, no less a sum than £10,000 has been transferred from the family of which I am a member; and that during the course of eleven years' litigation, £800 more has been divided amongst the practitioners at the Scotch Bar, without the smallest prospect of obtaining relief. To whom can I complain of this violent and unconstitutional conduct, but to the Commons of England? I fearlessly and distinctly aver, that the House of Commons have been superseded in their legislative functions, by the Scotch Judges; and that these Judges *by a cruel, unjust, and wicked law of their own making*, have bereft an orphan family of minors, of their property and their happiness.

I am not agitating a question of Scotch law when I thus speak,—for I can have nothing to say to Judges who theoretically as well as practically show the unbounded and illegal power they possess, and the use they can make of it;—but it is the power and authority of Parliament which I speak of,—and it does seem clear,

whatever differences of opinion may arise in the Commons in lesser matters, that all other subjects are subordinate to such a charge as this, and must give place to it, as one which embraces the *legality* and the *effect* of their legislative proceedings. I complain, that what Parliament has done for the good of the subject, has been over-ruled and decided otherwise by a *law* made by the Scotch Judges, which they think better, and by which law I have lost nearly all my property. This is the simple subject which I wish to lay before the Commons; and till that is disposed of, they, together with the House of Lords, must rest satisfied with being held subordinate to a convention of Scotch Judges. It is needless to speak of appeal; for that is only competent upon a final judgment, and of a process which is portable. Mine has depended in court for eleven years, and is now stuck fast where it was—before the Judge Ordinary. If these misfortunes could be attributed to *chance*, I should perhaps rest satisfied with the reflection, that I had done my best to avert them, and I should suffer with resignation, any disappointment which I deemed irremediable: but that satisfaction I cannot enjoy, because it is perfectly in the power of the Commons House of Parliament to give me the fullest relief when the wrongs which I have suffered are made known and substantiated. I want no new law. There is nothing, in my case, to state against the existing statutes—they are here perfectly adequate to have protected me; but my whole misfortune has arisen from the Judges *rescinding the statute of Parliament* made in the year 1672, and substituting in its place *their own Act of Sederunt;* although the wisdom of Parliament cannot be traced in a single section of it.

You are not to be told that the most prominent and distinguishing feature of the British constitution, is, that the people are governed by their own laws, in other words, by laws made by their own representatives, freely chosen; that laws made by a few individuals in the nomination and

pay of the Crown, are no better than acts of high treason; and that when these laws are subversive of the statutes made by the representatives of the nation, they lead direct to rebellion, as being in themselves contradictory, oppressive, and incompetent.' President Hope tells us, *and with good effect*, being himself the Judge, that the laws made by himself and the other Judges in the nomination of the Crown, "are the laws of the land;" nay, he goes further, for he has pronounced it an act of criminality, in those who are oppressed and ruined by his laws, to complain of them, or to petition those who made them to reconsider them. Lord Hermand, the senior Judge of the same division, not altogether satisfied with the wisdom of the collisive acts of either the one authority or of the other, mantains that *right reason* is paramount to written law, and that all the Parliaments in the world will never convince him that he is wrong. It is upon the force and effect of this *right reason*, as it is called, that my cause has been hung up for eleven years, and that the statute of Parliament 1672 is rendered of no effect.

The following statement of facts, however loosely thrown together, will unfold to you the manner by which I got myself involved in this suit, and the nature and extent of the loss sustained, and will also tend to show, that the procedure of the Court of Session is totally inadequate for compassing the ends of substantial justice; for, however fraudulently the factors of the Court may act, the Judges will neither put the statute of Parliament in force against them, nor will they even give effect to their own Act of Sederunt.

In February 1798, an extensive and opulent farmer, near the banks of Tweed, died, leaving a family of young ladies mostly under age. A merchant of Edinburgh petitioned the Court, and was appointed factor under its authority; and of course put himself in possession of the whole estate, subject to no check or controul, save what he was pleased to state against himself. In March 1809, I

became a relation of the family, and three months subsequently the widow died. When on her death-bed, she called me to her, and stated the treatment she had received from the factor,—that she had often supplicated him to render some account of the property belonging to her children, but that she had only met with insult and abuse,—that she feared the whole property would be lost,—and that her unmarried daughters, thus plundered of their paternal inheritance, would be ruined and undone. She implored me to take them under my protection, and to use every means in my power to recover their property from the hands of the factor. I pledged myself to the dying mother, that I would never desert or betray the interests of her children, and that I would use every means in my power to put the young ladies in possession of their rightful property; and as one of them was my own wife, I certainly thought that I had the right and the power to do so, little imagining that an honest discharge of my duty, in this respect, would bring down upon my head the personal resentment of President Hope. The factor, for reasons best known to himself, but not difficult to be understood, rendered no account of his intromissions for a period of ten years, and even at the end of that time, acting under the protection of the Court, he not only refused to produce any accounts whatever, but even disputed *in toto* the right of the party aggrieved to call him to account, pretending that he held his appointment from the Court of Session, and was only accountable to those who appointed him. He was so condescending, however, as to say that he would allow his own cautioner to see his books, and report to the family for whom he had acted, although the factor was at that time *a bankrupt*, and of course his cautioner behoved to state not only how much the factor was in the family's debt, but also the sum which he himself would have to pay. It is easy to perceive, that statements of accounts made up at such a time, and under such circumstances, could not possibly be correct; and it is also evi-

dent that the errors would be all on one side. Accordingly, the pursuers discovered, that in those accounts the cautioner had given the factor credit for £300 unvouched, and that this factor had abstracted certain retired vouchers from the repositories of the deceased, which he delivered up to a pretended claimant, and in his own hand writing made out an account to a large amount, against the children for whom he acted, in favour of the said claimant. When the young ladies became of age, he prevailed upon several of them to sign bills drawn out also in his own hand-writing, for their proportion of this pretended debt; but instead of delivering those bills to the pretended claimant, he put them into his own pocket, and he and his cautioner have since claimed payment of them as a debt transferred to them. The sum claimed, including interest, exceeds £400. There is also a sum taken credit for as paid to a relation of the factor's which has been applied to the purchase of a house of which the factor is to reap the ultimate advantage; for the property is to be his own at the death of his relation.

The falsehoods which the pursuers have detected in the factor's pleadings are no less conspicuous. Regarding a farm in which the pursuers' interest depended on the nature of the possession, the factor repeatedly asserted to the Court, that he and other tenants did not occupy that farm in equal shares as a grazing farm, but that they held it in *unequal shares*, not in their own right, but in the right of a preceding bankrupt tenant. *A more deliberate falsehood than this never dropped from the lips of a villain.* By mere accident, the pursuers at last discovered a statement, exhibiting the operations on the farm for several years, in which all the tenants pay equally and receive equally; and this statement is written by the factor himself, and signed in the presence of witnesses. At the time when the pursuer's father died, a Mr George Bell was due them about L500, constituted by a bond for L300, and bills for stock purchased at farm roup. The pursuers

discovered that the factor had allowed a considerable part of this debt to be extinguished by contra claims, which Bell exhibited in favour of himself in some farming speculation. The factor, as usual denied the charge in the following words: "Now the fact is, and the pursuers know "it well, that the defender never did allow Bell to compensate one shilling of the debt due to them by any "other claim; and it will be judged with what face they "come before your Lordships with an assertion which "they know to be so contrary to the fact." But the fact is, and the factor knows it well, that, notwithstanding of this unqualified denial, he did allow a large sum due by Bell to be extinguished by contra claims,—that an account current was opened betwixt them, and signed by each in the presence of witnesses,—and that one copy is in the hands of Mr Wood, and another in the hands of Mr Rutherford, writers in Jedburgh. It will, therefore, be judged with what face the factor made such a statement, knowing it to be so false. This point, and that relating to the farm, involves a sum to the extent of about £1000.

In the pleadings conducted by the factor, in which his relation and the pretended claimant were concerned, he found it necessary to show that the minors' father occupied extensive farms—held valuable leases—was in opulent circumstances—and that the minors, at their father's death, obtained a lucrative succession. The minors' father no doubt was an extensive farmer, He occupied, at his death the farms of Crailinghall, Upper Crailing, Cappoch, Haughhead, and a share of a grazing farm called Muirfield. His leases *were* valuable. The farm of Crailinghall was let two years after his death at an advance of 600 guineas. He *was* in opulent circumstances, as the factor has clearly made out in those pleadings; and it may farther be observed, that the factor had himself borrowed from him £200. A twelvemonth before the minors' father died, he succeeded, as can be instructed, to about £3500, upon the death of an uncle. Unfortunately, however, for the minors, the

shade of their father's property has disappeared; for in the factor's accounts, obtained only by compulsion ten years after his appointment, it does not appear that he has at any time placed to the credit of the minors a sum exceeding that which was left them by their father's uncle. This is incomprehensible. Their father was not in arrears with his landlords, he had no bank credit, he had no borrowed money; on the contrary, he had money lent out at interest. And were a jury of farmers to decide upon the extent of property left to the minors by their father, the calculation might considerably exceed, but it would not be below £8000, with twenty years' interest; and that with the sum admitted by the factor in his statements, as recovered from the uncle's estate, exceeds £10,000.

It is only adding insult to injustice, to say to minors, when they become of age, that they shall have no redress unless they can distinctly condescend upon the extent of the loss which they have sustained. It was their inability to prove those facts, when their property was seized upon and carried off, which induced the legislature to make for their protection the act 1672, which declares, that when tutors or curators carry off their property without any check or controul, "there is no means by which a charge can be "made up against the said tutors or curators, but them-"selves, who, when they are brought to an account, *make* "*up both their own charge and discharge.*" The Act of Parliament forcibly anticipated these fraudulent transactions *, and effectually guarded against them. According to it, the statements of the factor, produced ten years after his appointment, would be rejected *in toto*: Yet such has

* Their tutors having immediate access to their charter-chests, writs, evidents, and securities of their lands, sums of money, or others belonging to them, which they may embezzle, suppress, or by collusion give up to their debtors, or other parties interested, *without justification, or otherwise having got satisfaction.*—Preamble to the Act of Parliament 1672.

been the procedure in the Court of Session, and such has been the effect of their unconstitutional proceedings, that not one shilling, even of admitted funds, can be obtained after eleven years' litigation, nor will the Judge give effect to the contract made with the factor.

I have now SISTED THE PROCESS, not because the parties have failed to establish their right to their own property, but because Lord Succoth *either will not, or cannot*, bring it to a termination before him. The public tell me, that I have lost the ear of the Court, that many of the friends of the Judge are factors, and that I will suffer for having exposed the abuses on the estates of minors. My own counsel advise me to abandon the cause. They in effect tell me, that it is of no consequence however improperly the factor may have acted, for the Court is not in the practice of giving effect to their own law, when the offending party is factor of their own appointment; and that, contrary to the conditions of their own contract, they will protect him at all hazards. And thus it is, that what the President is pleased to call "the regular judicial procedure of the Court, and "the substantial justice of the country," appears to be "nothing else than justice shamefully delayed. My case was before Lord Succoth ten years ago, and it is before him still; and, in all probability, will remain before him so long as he remains on the Bench. Yet it is so simple, that twelve honest jurymen would pronounce a correct and final judgment on every point in dispute, on a hearing of two hours, although Lord Succoth, even with the aid of *learned counsel*, will not, I believe, finish it in twenty years. His Lordship orders pleading after pleading, and paper after paper, till the process has to be carried by a porter; and he has always taken care to prevent the factor from restoring the property carried off from the family when minors, although it is now thirteen years since the youngest became of age. At one time we find him pronouncing a judgment, and at another time recalling it; and shortly after we find

him leaving the country and going abroad for about two years, and the Court refusing to allow the case to be remitted to another Judge. At one time we find two years taken up in writing one paper by each counsel, which ought to have been written in six weeks; then we find a counsel promising to write a paper, accepting his fee, but afterwards at the end of six months refusing to perform his duty, and the Judge declining to compel him. At one time we find the factor ordered to produce certain vouchers, the property of the pursuers; at another time we find an order that the factor shall make objections to the producing of these vouchers. At one time we find the Judge on the Bench pledging himself to divide instantly a part of the funds; and immediately on the back of this declaration, we perceive a written judgment directly the reverse. At one time we find him lamenting that the case has been so long before him; and immediately after, we perceive an interlocutor so arranged as to destroy every hope hitherto entertained of ever getting the case out of Court, or recovering one shilling of the property carried off, by order of the Court, from the family, when minors.

My letter to Lord President Hope will enable you, Sir, to judge of the abuses practised upon the minors' estates in Scotland, and will point out, I trust, the necessity of directing the attention of Parliament to the wisdom of that statute made for their protection in 1672. Direful have been the effects resulting to minors and to the public at large, from the Commons dispensing with their privileges, and allowing the Judges of the Court of Session either to treat Acts of Parliament with ridicule and contempt, or to legislate for themselves. My other letter to Mr Hume may perhaps confirm the correctness of the position, that "when the functions of the Judge are joined with the "Legislative, the life, the liberty, and the property of the "subject, are then in the hands of arbitrary judges, whose "will is their law, and the rule of their procedure." The conduct of the Judges of the Court of Session is indeed a

confirmation of it, for they have not only assumed the right of legislating and of rescinding the statutes of Parliament —but also of prohibiting the subject from *even* humbly petitioning *themselves* to reconsider their own laws: And this letter will put it to the test, if they also claim the right to punish the subject for complaining to that public, to whom Judges were wont to be accountable, of the sufferings they have brought upon him by these destructive laws.

In Scotland, our ancestors perceived how difficult it was to convict Judges who wished to gratify their resentment against those who had offended them; because they always secured themselves from punishment and disgrace, under the invariable excuse of error in judgment. To correct this anomaly, various statutes were made by the Scotch Parliament, enacting, that if the decision of a Judge was three times reversed by a superior court, he could not remain any longer on the Bench; nor was he ever to be afterwards permitted to be a forespeaker or advocate. And when these statutes were enforced, the Judge had an interest in the equal administration of justice, as at no distant period a punishment might be inflicted on him if he failed to do so; but now, the Scotch Judges *can laugh* at their decisions being overturned, for they know that no punishment awaits them, although every judgment they have pronounced for 20 years should be reversed in the House of Lords.

This abuse, however, is not so severely felt in Scotland, as that *order of procedure introduced by Acts of Sederunt*, by which the injured litigant is ruined *before his case can be appealed*. If the party petitioning for justice happens to offend the Court, the Judge can protract his case for a lifetime before him; he can order pleading after pleading, and paper after paper, he can bring the case forward in fifty different forms, and swell the process to a porter's burden; although the original petition may only be three pages, yet, at the end of eleven years, a paper, as in my

case, of 490 pages, may be considered necessary by counsel to render *the procedure* intelligible. Evils such as these generate and foster almost all the abuses in Scotland. The price paid for justice, too, is so enormous, and the uncertainty of ever bringing a suit to a termination is so great, that it emboldens every unprincipled character to invade the rights of his neighbour, in the hopes of carrying off his property with impunity. Happy is the man who can calmly submit to such injustice and insult, without seeking redress in the Court of Session as I have done!

Every Scotchman who is in any degree acquainted with the history of his country, will have a pretty tolerable recollection of the character of those perjured villains who sat upon the Bench in 1674. These creatures of the Crown, acting without the salutary controul of a jury, and under the direction of Lauderdale, whose memory is still detested in Scotland, made an Act of Sederunt, by which they at once rendered themselves absolute, and which operated in the same manner as if the present Parliament were to pass an act silencing the press, and prohibiting his Majesty's subjects from approaching the House of Commons with their petitions and complaints. They were all to a man turned off at the Revolution; and the act they had made in 1674 was pronounced *treasonable*, and ceased to be in force. Acts made by Judges, which were declared *treasonable* in 1688, are *treasonable* still. "Disguise thyself as thou wilt, still, slavery, thou art a "bitter draught; and although thousands in all ages "have been made to drink of thee, thou art no less bit-"ter on that account." Perhaps the celebrated legislator Sir Ilay Campbell, if called upon, will *honestly* state the legitimate motive which the Court had in view in 1789, when it revived this same act, so much detested in a former age, and which, according to report, although enforced by the Court, was never signed by the President (Millar), so conscious was that upright Judge that they were betraying trust; and, instead of protecting the sub-

ject in his rights and privileges, that they were, by that act, destroying the very object for which the Court of Session was instituted. These men were sworn to administer justice; and instead of doing that, they have made a law to prevent justice from being administered. Instead of allowing the party, *as by law entitled*, to state the facts in which he has a deep interest, they compel him to employ agents and counsel who have an interest in concealing the facts, and keeping them out of view. The party's interest is in getting his case soon out of Court; but this act compels him to employ those whose interest lies in protracting his cause, and confining his suit in Court for many years. The party injured has an interest in confining the pleading to the points in dispute, in order to prevent the cause from getting into confusion: the agent and counsel have an interest in introducing extraneous pleadings, to lengthen out their papers; and it is the making of their fortune to get their clients' causes involved. In my own case, my former agent and my former counsel were so successful, that, although the original paper only contained three pages, yet, at the end of ten years, my present counsel required to write a paper of 490 pages to make the *procedure intelligible* to the Judge. The production of that paper has cost £164, although a paper of twenty pages would, but for an inadequate order of process, and the Act of Sederunt 1789, prohibiting me from complaining of it, have been quite sufficient to state the merits of the whole points in dispute, and would not have cost above ten guineas.

Indeed, the present practice of the Court of Session has already gone far to corrupt the morals of the young counsel, and in totally destroying the laudable ambition of being serviceable to their clients. It is the agent and not the client who employs them; and as the interest of the agent lies in protracting a suit, it is quite evident that many agents will be inclined to employ that counsel whom they deem best qualified to effect that purpose.

Young counsel, who at first resolve to act honourably, and do justice to their clients, find that unless they will act otherwise the agents will cease to employ them. They soon perceive that another counsel has business pressed upon him, not because he has done his duty, but because he makes no scruple in betraying trust, and protracting a cause instead of finishing it; and, by forcing, as in my case, the whole procedure into a mass of confusion. It is counsel of this description whom most of the agents are anxious to employ. The interest of the party and his agent are the same in the Jury Court, because there is only one hearing; and the agent cannot derive any advantage from injuring his client. But in the Court of Session, the reverse is the fact; the agent derives an advantage by protracting the cause, in the same proportion as his client sustains a loss. The party injured has, under the existing Acts of Sederunt, no more control over his agent and counsel than he has a control over the Court in making those acts which deprive him of his rights. *This is the close burgh system in perfection! He must pay for all, and be responsible for all!* If he should afterwards discover that his cause has been protracted or lost by the deliberate corruption of his own counsel, he can obtain no relief; for the same law which prevents him from having any control in his own affairs, protects those guilty counsel who have acted for him, who cannot be brought to justice but with their own consent.

In justice to many gentlemen of the Bar, however, I am bound to say, that in my humble opinion no blame can be attached to them for refusing to sign such petitions. "From time immemorial, (say they) we have enjoyed the "privilege of accepting or declining employment as we "thought proper; because you the litigant enjoyed the pri- "vilege of stating your own cause, or applying to us as "you thought fit.—The Court has now deprived you of "the privilege of stating your own cause; but it has for- "gotten to compel us to do so for you. When you come

"then with a petition to sign against one of our number, "we decline signing it, *not* because we approve of that "counsel's conduct, but because we decline such unplea-"sant employment." You will therefore perceive, that by this act a guilty counsel is most effectually screened from punishment; other counsel decline signing a petition against him, and the Court throw all petitions over the Bar, unless signed by counsel. *There is a charm in the signature of counsel, which renders the petition worthy of their notice, and when that is wanting, the doors of a court of justice are shut in the face of an injured subject.* Twice has the President threatened me with punishment, for complaining of having been wronged by one of these counsel, and for offering to prove the fact at his Lordship's Bar. He told me to go and get other counsel to sign my complaint against the one complained of!! He might as well have told me to go and kiss the Emperour of China's great toe. President Hope does not consider this as unjust, or as pressing hard upon the subject; for in his opinion one and all of the lawyer profession are like himself, so honest, so honourable, so wise, and so just, that not one of them can do wrong. "Your charges," said he "are false; for "with such an independent Bar, and such respectable "agents, you can have no cause to complain." This his Lordship does not require to examine evidence when lawyers are complained of: he pronounces them innocent, not because he finds the evidence defective, but because they, *like the King of England, can do no wrong.* The *dimensions* and *size of my process,* showed, in all conscience, the industry, and labour which agents and counsel had, for eleven years, fruitlessly given to the cause before them; not to mention the expence which I have been subjected to, for no purpose whatever, unless to advantage lawyers, and to enrich the Court's fee-fund.

His Lordship appears to have forgot, that a very short time before he made this declaration to me; he said from the Bench to a counsel in a cause between other parties,

" I have never seen such low wit, vulgar abuse, scurrility, " and buffoonery, as in these answers. *It is painful to* " *think the Bar of Scotland has furnished a man capable of* " *writing such a paper.*" On that counsel demanding that his Lordship's words should be taken down, he added, " I " will repeat them three times over ;" which he did. " I " shall (said he) attest them for your satisfaction." When animadverting on a paper said to have been drawn by Mr Greenshields, revised by the Dean of Faculty, and transcribed by Mr Haggart, three counsel at the Bar, his Lordship said, " Mr Haggart has here, as is his usual practice, " stated facts and circumstances of which there is no evi- " dence on the record, and which live in the memory of " that gentleman alone." He added, " he *has conducted* " *this cause as he does all other causes in which he is con-* " *cerned.*" When the counsel rose to explain, he was interrupted, and ordered to sit down by the President. Expressions such as these from the mouth of his Lordship, furnish a pretty flat denial of his assertions to me ; but as the declarations were made at different times, to answer different purposes, perhaps it may be considered by his Lordship of no consequence, although the one averment flatly contradicts the other. His Lordship, if he will, may say that the Bar is independent of the Bench. The slave, too, with the log suspended from his leg, may say he is a freeman ; but we can exercise our own judgment, and are not bound to believe either the one or the other. No man can act independently of another, so long as his daily bread depends on the other's approbation. The daily bread of counsel depends on the will of the Judges ; the moment they fall under the lash of displeasure, agents avoid them, and clients imagine that they will lose their cause if they employ a counsel who has given offence to the Court. Expressions such as I have quoted, will destroy the practice of the most independent and daring counsel that ever spoke at the Bar. When President Hope can name a counsel who dares complain of Acts of Sederunt, which invade the

rights of the subjects, and who dares tell the Judges that they have no right to make these laws, I will then frankly admit the independence of the Bar, and say, that such a counsel has fearlessly asserted the rights of his fellow subjects. So long as the Bar finds that it is *not their interest* to assert the rights of their fellow subjects, it can not be expected that they will do it from choice; particularly as such fearful punishment awaits them, if they fall under the lash of President Hope's resentment, who can use with impunity such unqualified expressions of abuse as may deprive them of nine-tenths of their income.

In the face of such evidence as is contained in this, and the annexed letter to President Hope, it is truly pitiful and disgusting, to receive a letter from him, averring that the Court wishes to put a stop to abuses practised on the estates of minors, while the very individual to whom his letter is addressed, has been threatened to be treated as a criminal, for humbly praying that the Court would put the law in force against a fraudulent factor who had plundered him. You will likewise perceive, from my letter to Mr Hume, that, although the President has repeatedly refused to inquire into my complaint as laid before the Court, he has never been backward in judging on the state of my intellect,—*a subject not yet before the Court.* In the presence of a crowded Bar, he pronounced "that my mind was impaired, that I was not a man of a sober judgment," and that it was out of pure compassion to me, that he had hitherto declined to treat me as a criminal. How far such expressions are free from malice and malignity, is not for me to determine. If I am a fool, a madman, a criminal, a man whose mind is impaired, and not a man of a sober judgment,—it is singular, indeed, that a discerning public has never yet been able to discover it. If, on the other hand, I am *not* what President Hope has pronounced me to be, I submit to you on what principle of justice President Hope can be allowed to remain on the Bench, after

having so completely degraded the dignity of the Supreme Court of Justice in Scotland.* Such conduct plainly proves, that when men get gowns round their shoulders, and the King's presentation in their pockets, they can do, with impunity, many *unconstitutional* acts. In their "star chamber" they can make laws, and, on the Bench, proclaim these "the laws of the land." They can cause our property to be carried off under the authority of *their* laws, and afterwards refuse to give effect to them. Their will is the law; consequently, they can, at their pleasure, deprive us of our liberty, ruin our propects in life, injure our characters, disturb the peace of our families, destroy our domestic happiness, and wound the feelings of our friends.

But although the President maintains, that laws made by Judges are "the laws of the land," it is no small consolation to find him admitting that Judges are responsible to that public for whom they act, and by whom they are paid. A counsel at their Bar, who had been insulted by his Lordship in the discharge of his duty, demanded an explanation, which the President declined, but added, "Do not suppose, Sir, from this, that I wish to arrogate "to myself an *exemption from all responsibility* for what "I may say on the Bench; on the contrary, *I know that* "*I am responsible*, but it is a legal and public responsibility "*only* to which I will submit." In his defences against that gentleman's prosecution for his abuse of him from the chair, presently pending in Court, he maintains, that he is not accountable to a Court of law, but says, "all Judges "are liable to controul by Parliament; and that the "power of Parliament is not denied."†

* When Mr Hume stated in the House of Commons, the treatment which I had received, Lord Binning said, that if it could be made out that President Hope had used such expressions, he ought not to sit another hour on the Bench.

† See the action of scandal and damages, at the suit of the late Mr Haggart, advocate, against the Right Hon. Charles Hope, 7th September 1820, p. 22.

Our forefathers, who placed the family of Brunswick upon the throne of Great Britain, and who perfected that constitution which President Hope and Lord Hermand never cease boasting of, did *not* view with indifference acts so monstrous, and proceedings so unconstitutional, as I now complain of; nor were they backward in correcting them. Permit me to remind you of the speeches made in Parliament, when inquiring into the conduct of *Chief Justice Scroggs*. As a copy of these proceedings is just now before me, I shall make a few extracts from some of the speeches then delivered by the leading members of a majority of the House. I do this, in order to show with what indignation the representatives of the nation then viewed the conduct of Judges, who attempted to supersede them in their functions, and with what steadfastness and fidelity they supported the rights of their constituents, and, with these rights, the vital principles of the constitution itself. *Mr Booth, afterwards Earl of Warrington*, in addressing Parliament on this subject, spoke to the following effect:—"Of what use is it for this House to "make laws, if they are not to be executed, and if Judges "are to make laws of their own? Your laws then, Sir, "are no better than waste paper. It is the *indispensible* "*duty of this House* to see that those who are entrusted "with the execution of your laws, do their duty; that "neither the innocent may be condemned, nor the guilty "acquitted. The execution of the law is so clear, so un-"doubted, and so public a right, that no power whatever "can dispense with it; and those whose duty it is to see "the law executed, if they either pervert the law, or hin-"der it from taking its course, are highly criminal, and "ought to be brought to a strict account. Therefore, in "my opinion, this matter ought to be searched into, and, "if they prove such faults as are complained of, we can-"not do less than punish the offenders. *The cry of their* "*unjust dealings is great*, and I hope their punishment

"will be such as their crimes deserve." *Mr Sacheverel* rose immediately after Mr Booth, and expressed himself in the same indignant manner against the conduct of the Judges of that period:—"If Judges can prevent the "penalties of the laws, if they can make laws by their "rules of Court, I think this government will soon be "subverted; therefore it is high time for this House to "speak with these gentlemen. In former times, Judges "have been impeached, and hanged too, for crimes less "than these; and the reason was, because they broke the "King's oath as well as their own. If what has been "said of some of these Judges can be proved, they shall "not want my vote to inflict on them the same chastise-"ment." *Sir Francis Warrington* also gave his opinion as follows:—"Laws made in this House are but dead "letters, unless you can secure the execution of them. "We are come, I think, to the old times again. In the "front of *Magna Charta*, it is said, 'We will defer or "deny justice to no man.' I wonder what these Judges "will say for themselves. If they have not read that law, "they ought not to sit upon a Bench; and, if they have "read it, they deserve to lose their heads. They know "that it was lawful for the subject to petition, and their "knowledge aggravates their crime."

Had this taken place under the tyrannical reign of Henry the VIII. it would not have been a precedent worth quoting; but it must be kept in view, that the speeches were made, and the proceedings adopted, by the men who placed the present family upon the throne, and who perfected what our Judges themselves call a glorious constitution. The result of the enquiry by the Commons was, that, on the 5th of January 1681, Chief Justice Scroggs was impeached for high treason, on the following articles; *First*, For making laws, and calling them the laws of the land. *Secondly*, For using unbecoming, violent, and threatening expressions from the chair, to litigants suppli-

cating him for justice. *Thirdly*, For delaying justice, and threatening with arbitrary imprisonment, and other punishments, those who exposed such abuses. And, *fourthly*, for employing one "Robert Stevens" to go to printing-houses, and carry off papers and other property, in order that the unjust decisions of the Court might not be made known to the public.

I presume I need not suggest, how closely and forcibly the observations of the honourable members of the House of Commons, in the case just quoted, apply to the Scotch *Acts of Sederunt*, by which I have been so deeply aggrieved. When I complained that my property was intromitted with, contrary to the statutes, I was told by President Hope, that "Acts of Sederunt are the law of the land." When I supplicated for justice, I was grossly insulted at the Bar of the Court by President Hope, and threatened with imprisonment. When I again complained that counsel had wronged me, and that my case had been improperly delayed, I was told by the same Judge, that he knew nothing about my case, although it had been ten years before that Division of the Court of which his Lordship is the head. My papers, too, were carried off from the Star Newspaper office, by a person employed by President Hope and the Sheriff, for the purpose of preventing a decision of the Court of Session being made known to the public.

I have always, Sir, contributed my share to the burdens of the state, and, in the hour of danger, when those in power requested my personal services, I cheerfully complied—I paid for my own uniform—I furnished my own arms—I served without pay, and perhaps I would not have been the first man who would have turned his back upon the invaders of my country. But what return have I received for these services? I have had my property carried off from me contrary to law,—contrary to law I have been prohibited from humbly petitioning that it might be restored,—I

have been grossly insulted at the bar of justice,—I have been told before a public audience, *that my mind is impaired, that I am not a man of a sober judgment,*—and that, if ever I again presume to trouble those who caused my property to be carried off, I will be *considered a criminal, and will be by them treated as such.* Should the day ever arrive when the Commons of Great Britain judge it their duty to enquire into the conduct of President Hope and Lord Succoth, perhaps the House in its wisdom, may consider that the one has degraded the dignity of justice, and excited a spirit of discontent and dissatisfaction in the minds of the public; while the other perhaps, may appear to that House to want that capacity of intellect and firmness of mind which is requisite in a Judge. Strong measures may be considered just and due to the public, but this, you will perceive, is no relief to me.

It is a fact which will not be disputed, that, when a British subject has sustained a loss from the servants of the public, the public are in justice bound to make good that loss to the party. I have lost my property in consequence of Judges, who are the servants of the public, having made certain laws, and allowed it to be carried off under their authority. I can obtain no relief; they are party, judge, and jury, in their own cause; and, in such a situation, I submit to you, if I have not a claim on my country to the extent of the injury which I have sustained, I THEREFORE humbly and earnestly entreat, that you, and other honourable members, will be pleased to take the necessary measures, to probe this subject to the bottom. The friends of President Hope, who are Members of Parliament, I do think, will not oppose a fair and candid inquiry; for, after such charges are exhibited against him, it would be ruinous to his Lordship's honour as a Judge, and to his character as a gentleman, were they to protest against inquiry. If I fail to make good my charge, I know the punishment that awaits me; and, if I establish it, I

submit if I am not entitled to redress to the extent of the injury I have suffered.

I have the honour to be,

SIR,

Your most obedient and very humble servant,

JOHN HAY.

York Place, Edinburgh, 6th Nov. 1820.

VII.

NOTE FOR ALISON CRANSTOUN HAY, AND JOHN HAY HER HUSBAND, FOR HIS INTEREST.

Edinburgh, 8th Nov. 1820.

MY LORD PRESIDENT,

I shall make no apology for again troubling your Lordship and the Court with this note. You need not be informed of the objects for which courts of justice are instituted; nor ought I to be placed in such a situation as ever to doubt of the inclination of the Judge to listen to complaints of existing abuses, or of your Lordship's zeal to remove every obstacle to the fair and impartial administration of justice to every human being.

Your Lordship will recollect that, some time ago, I presented a printed petition to the Court, stating that I had been seriously injured by the mal-practices of one of your factors, appointed under your Act of Sederunt 1730. I there complained that I could not prevail upon counsel to state the facts; and I humbly prayed the Court to recall the Act of Sederunt 1789, which prevented me from stating my own cause. About the same time I complained by a note to your Lordship and the Court, that two counsel at your Bar, Mr Hope and Mr More, had injured and deceived me, for, instead of stating my cause to the Court, as I instructed them, they pronounced their

own judgment on the merits of it, and refused to do their duty of counsel, as directed by my agent.

I am sorry to say, that my presenting the printed petition, and the note complaining of counsel, was, by your Lordship and the Court, viewed as an eggregious offence; I was therefore ordered to the front bar of the public Court, and reproved by your Lordship in language which, I am sure, your Lordship will not blame me though I do not repeat.

Finding that the Court would not allow me to state my own case, nor compel Mr More and Mr Hope to do so for me, I contracted, through the medium of my agent, with Mr Miller. This gentleman agreed to conduct my cause conformable to the rules of Court, and state every fact I could establish by evidence. The Court ordered a memorial on all the points I complained of; and Mr Miller received and accepted of his fee, and agreed to write the paper; but he failed to perform his duty. At the end of six months, I made the disagreeable discovery that not a line of this paper had been written, although all that time I had been amused with letters from my agent, fixing, at short dates, when the paper would be completed. I then wrote Mr Miller, reminding him of his engagements, and explained to him the great loss I was sustaining from the delay. This gentleman was pleased to consider that I had committed an offence in reminding him of his duty; he returned the process, and refused to write in it. I wrote him a second time, that I would not take back the process; that he must write the paper he had been paid for, according to agreement; and if he still failed to perform his duty, that I would complain to your Lordship. I received for answer, that such intimation had confirmed him in his resolution not to write the memorial; so convinced was that gentleman that your Lordship would approve of his conduct.

In a letter which I wrote to my agent at that time, I thus expressed myself: "I beg to say, that since the pro-

" cess was put into your hands, every exertion which an " honest active agent could make for the interest of his em- " ployers, has been performed by you. Should Mr Miller " and you continue to refuse to act for me, you will per- " ceive that I have no alternative but again to apply to " the Court."

Your Lordship will please keep in view, that Mr Miller felt quite at his ease. The reproof I had received from your Lordship for complaining of Mr More, would, he thought, be a lesson to me, never again to make my wrongs known to your Lordship; and he certainly considered that he had nothing to fear from the complaint of one whom the public viewed as an injured subject, and who was labouring under your Lordship's *highest displeasure.* But the case of my agent was very different: He had received, and, as *I thought at the time,* most justly, the expressions of my entire satisfaction; and the consternation he was thrown into, from the apprehension of your Lordship discovering that he had done his duty to me, rendered him completely unhappy; and he implored me to suppress that part of my letter where I had expressed *my satisfaction of his conduct.* " Unless (said he) you " write me, agreeing to suppress that paragraph of your " letter which relates to me, excepting so far as it *com-* " *plains of my declining to act,* I must be under the ne- " cessity of transmitting to the Lord President a copy of " some letters, which will show his Lordship *the true state* " *of the case.*"

This agent, a few weeks ago, rendered his account; and the parties interested perceived, with surprise, certain charges, which clearly established that their agent and counsel had made private communications to your Lordship; and although each of the parties may have his own opinion, *one and all of us exclaimed that we were betrayed,* and we instantly instructed the agent to stop all proceed-

ings. Combining this with what I have to state against Lord Succoth, *the whole procedure appears to be tainted.*

I am desirous to see those private communications which my agent and counsel made to your Lordship. I wish to be informed how often my counsel has had private meetings with your Lordship, or with Lord Succoth, and the instructions or directions he then received, in respect to my cause.

Your Lordship does not require to be told, that I am, by the Act 1789, prohibited from stating my own case; and, under such procedure, you will admit, that the breath of suspicion ought not for a moment to be permitted to rest in any quarter within the walls of that Court. I have other complaints, still more serious, to state, regarding Lord Succoth; but it is not necessary to lengthen out this communication. I pray that your Lordship will take the sense of the whole Court upon this note, and intimate the same to me.

In respect, &c.

JOHN HAY.

VIII.

York Place, York Lane, Edinburgh, 18th Nov. 1820.

To the Honourable Lord Succoth.

My Lord,—In making inquiry as to my right to complain of your Lordship, I am informed that I have not only a right to complain when wronged, but also a right to obtain redress to the extent of the injury received; but that before a Judge can be subjected in damages to any subject, the party injured must first establish in a competent court that an injury has been sustained by the Judge not doing his duty.

It is my intention to endeavour to establish this point, by bringing your Lordship's conduct under the consider-

ation of the Commons, and show that I have been deeply injured by your detaining my cause before you for ten years, and then pronouncing a judgment in such a manner as to destroy all hopes of bringing my suit to a termination.

By referring to your last interlocutor, you will find that ten years exertions of learned counsel has not enabled you to understand the cause; that you have made a remit to an accountant for more information; that you have not pronounced judgment on the points in dispute; that you have declined to allow the £1200 in Mr Tweedie's hands to be divided, although, on the Bench, you did in the most unqualified manner pledge yourself to do so.

You instruct the accountant to report to you if the paper No. 8. in the process will supply the defects of the tutorial or original inventories which ought to have been lodged in 1798. The paper No. 8. is a statement of accounts made up, as the factor tells you, in 1808, and how it could have entered into your head that such a statement of accounts could answer the purpose, or supply the defects of tutorial inventories, which required to be lodged in Court in 1798, is quite beyond my comprehension. The process has been before you ten years, and you remit to the accountant for more information; and the question you ask regarding inventories shows, that, if you have read the papers, you do not yet understand the cause.

The public appear to entertain an opinion, that the Judges in the Court of Session will not apply the law to factors, however guilty; nor will they give effect to the Act of Sederunt 1730, although every condition of it has been violated. I am sorry to say, that your Lordship's interlocutor is not calculated to prove that such an opinion is incorrect.

It was not my intention to have troubled you with this communication, had I not been told that I was in can-

dour bound to apply to you for an explanation, before I complained to Parliament. In compliance with this view, I shall wait four days for your Lordship's reply.

I have the honour to be,

My Lord, your Lordship's

Most obedient and very humble Servant,

JOHN HAY.

IX.

NOTE for Alison Cranstoun Hay, and John Hay, her husband, for his interest.

Edinburgh, 23d November 1820.

My Lord Succoth,—Some months ago, the other parties concerned in the cause against Scott, instructed me to write the agent to stop all proceedings. *First*, Because they saw no prospect of your Lordship ever finishing the cause; and, *secondly*, Because they had discovered that their agent and counsel were betraying trust by making private communications to the Judges, and holding private meetings with them, injurious to the interests of their own clients. Your Lordship will, therefore, perceive, that the procedure is *tainted; and the Court having refused to inquire into such disgraceful conduct*, the pursuers do not think they are receiving justice, and they decline doing any thing more in that process, till the sense of the House of Commons is taken upon the subject, and upon the treatment they have received from your Lordship and from President Hope.

I understand you have this day ordered the pursuers to lodge with you another paper in addition to all that has been wrote for these ten years. Your Lordship will please be informed, that, for the reasons above stated, they decline employing either agent or counsel, until the Court is pleased to inquire into the conduct of Mr Gifford and Mr Miller.

In respect, &c.

JOHN HAY.

X.

York Place, Edinburgh, 21st Nov. 1820.

My Lord,—I beg to hand your Lordship the inclosed papers, and I request your particular attention to the note addressed to President Hope, copies of which were sent to him and to the other parties named in it. The public appear to entertain an opinion that his Lordship is my personal enemy, and that I need not expect to obtain justice; I wish I had less reason to believe this. I am surprised at his Lordship's silence under such a charge; this certainly strengthens suspicion that a plot has been detected.

I forwarded copies of these papers yesterday to Lord Harrowby. Should your Lordship judge that my complaints are worthy of your consideration, I shall expect to hear from you, as I have not yet forwarded any of these letters to the Members of the House of Commons.

I have the honour to be,
My Lord, your Lordship's
Most obedient Servant,
JOHN HAY.

To the Right Honourable
the Lord Advocate of Scotland.

XI.

York Place, York Lane, Edinburgh,
30th November 1820.

Reverend Sir,—When a British subject has been abused, insulted, and oppressed, as I have been, by the Lord President of the Court of Session, I do humbly think it is his duty to make his wrongs known to the public. Every act of oppression and injustice in a court of law against an individual, is an encroachment on the rights of the community; and if the public allow that individual, who maintains his rights, to be ruined, and made

a victim of judicial resentment, they may soon, perhaps, have few righs to boast of. I entreat you will peruse the enclosed papers; and I do humbly think that the attention of the public should be directed to the abuses on the estates of minors.

I shall be glad to hear from you at your conveniency.

I have the honour to be, REVEREND SIR,

Your most obedient very humble servant,

JOHN HAY.

To the Reverend Mr Thomson.

[The Correspondence with Mr Rolland was neither proved, nor attempted to be proved; of course it is not inserted.]

XIV.

York Place, Edinburgh,
13th September 1821.

MY LORD,—It will be consistent with your Lordship's recollection, that some years ago, two Counsel at your Bar were employed to state my cause to the Court conformable to its rules. These gentlemen, instead of doing so, advised that the cause should be given up, declaring, that, however improper the conduct of your factor had been, the Court would protect him; and they were at pains to impress on the mind of their clients, that the Court never gave the orphan and the fatherless the benefit of the laws which were made for the protection of their property. These averments presented to my mind such a horrible picture of corruption, perjury, and unnatural feeling on the part of the Judges, that I felt quite indignant, not against the accused, but against the accusers. I instructed my agent to intimate to them, that they were appointed to state, and not decide my cause,—that it was the judgment of the Court I wanted upon it, and not their judgment on the corruption of the Court,—that it was soon

enough to give an opinion on that subject when desired, —that my opinion of the Court was precisely different,— that I would not take my cause out of Court,—that they must do their duty as counsel, by stating the facts, and pleading to them. These gentlemen refused to do so. I then complained by a note to your Lordship, as Head of the Court. Your Lordship has not forgot what was the result.

From certain circumstances, not unknown to your Lordship, certain agents of the Court, and counsel at the Bar, and the public in general, appear to view me as a victim to be sacrificed to your resentment; and some of those individuals, I am sorry to say, have acted, as if doing me an injury was conferring a favour on your Lordship; for they have not only injured me, but they appear anxious that your Lordship may discover it. Such conduct on the part of the agents and counsel cannot be more ruinous to my family, and painful to my mind, than it is injurious to your character as a man, your honour as a gentleman, and your usefulness as a Judge.

If it is possible for us to agree upon one single point, it will be on that of putting a stop to proceedings which are equally injurious to us both; and this can only be done by my bringing the conduct of some of the offenders before your Lordship in Court, which will enable you to act in such a manner as will convince a discerning public, that you know no man in Court but only his cause; and that neither agent nor counsel will be protected contrary to justice, nor will that justice be deferred, or the cause protracted.

But, my Lord, how am I to bring those offenders before the Court to obtain justice? Your Lordship will please keep in view, that justice is always denied, when the obtaining it is coupled with a condition which depends on the will of another over whom the injured party has no control. My complaint is against agents and counsel; your Lordship says you will not receive it unless signed by

counsel; and, as no counsel will sign a complaint against a brother, you will perceive you have coupled the receiving my complaint with a condition I cannot fulfil,—consequently justice is denied me.

It would be improper to lengthen out this letter, by entering fully upon the treatment I have received from agents and counsel; but, in case your Lordship should conceive, that what I have already stated is the only ground of complaint, I beg leave to enclose a pretty long extract from a letter sent to a counsel, which he has not thought advisable to answer.

I have told your Lordship that counsel will not sign my complaint. I entreat that your Lordship will inform me if you still adhere to your former resolution, namely, that you will not receive a complaint against a counsel unless signed by another,—and that you will treat me as a criminal, if I present a petition in my own name to the Court stating the facts, and praying for justice.

Waiting your Lordship's answer, I have the honour to be, my Lord, your Lordship's

Most obedient and very humble Servant,

JOHN HAY.

To the Right Honourable Charles Hope,
Lord President of the Court of Session.

I hope you will not consider it unreasonable on my part to request an explanation as to your not obtaining a reservation in the interlocutor of the Court regarding the farm of Muirfield. The Judges, and particularly Lord Balgray, said, that the matter as to the factor's management was still open; yet you allowed the interlocutor to be so framed by which your clients are foreclosed.

I wish to know your reason for allowing a factor to be appointed to that farm in 1811, without lodging a minute or protest against that proceeding on behalf of your clients. The Lord Ordinary now holds them liable for the future loss, and as assenting to the appointment, in

respect that no objection was made at the time by their counsel.

But the most singular breach of duty was that of your not instantly giving up the process commenced against the factor's mother for repetition of about £400, including interest, when the Lord Ordinary found the factor himself liable to your clients in that sum; your delaying to intimate, that the cause against the mother was abandoned, enabled the factor to get the judgment against himself recalled, in respect that two separate actions could not be maintained in one court for the same sum. The claim against the mother was extremely doubtful,—against the factor you obtained judgment; yet you allowed the factor to escape, and continue to carry on a doubtful action against the mother,—an action your clients are now advised to abandon as hopeless.

Some time afterwards, when acting along with Mr ——, you was at great pains to press upon the minds of your clients, that the Court would, contrary to law, protect the factor, however improper his conduct had been; and you advised that the cause might be taken out of Court. Your clients refused to do so, and insisted on your stating the cause to the Court. You then refused to do your duty, and relinquished their employment. At the very time the other counsel was seen exerting himself in making a new counsel master of the cause, so as to state it, you was seen in deep consultation with the factor and with his agent, under the most suspicious circumstances.

The above is an extract from a second letter sent to that counsel, requesting an explanation of his conduct. That individual having returned no answer, or made any communication whatever, the present was, along with a letter, forwarded to the Lord President on the 13th September 1821.

JOHN HAY.

York Lane, 13*th September* 1821.

XV.

COPY ANSWER.

Granton, 14th September 1821.

SIR,—I have received your letter. You know well that it is not by my own authority that I refuse to move to the Court petitions not signed by counsel. I am bound to do so by an Act of Sederunt made before I was on the Bench, of which, however, I entirely approve.

You are perfectly wrong in supposing that no counsel will sign a complaint against a brother advocate. I have seen several such. I once signed a very serious complaint myself against a respectable advocate; and there is not an advocate at the bar who will refuse to do so for you, if your complaint has the shadow of relevancy in it.

Considering the reasonable and gentleman-like manner in which you behaved when you was last before the Court, I did not expect to receive from you any letter couched in the terms of your last, which I shall be under the necessity of laying before the Court. I suspect that you are acting under very mischievous advice, which will have very serious consequences to you if you continue to be guided by it. And I am, &c.

XVI.

York Place, Edinburgh,
18th September 1821.

To the Right Hon. the Lord President.

My Lord,—I have the honour to acknowledge receipt of your Lordship's letter of the 14th current, in which you state your approval of the Act of Sederunt 1789, which prevents all complaints against counsel from reaching the Court unless signed by a brother counsel. I am

not inclined to call in question your Lordship's approbation of that act, or your power to enforce it. But power is one thing, and legal right is another; and, with submission, I do think your Lordship does not enjoy the legal right to make laws, and place the bar above the Bench. By that act, the client who is wronged by counsel can obtain no redress, unless counsel think proper to permit your Lordship to judge upon it. I am sorry to say, that your averment, in so far as I am concerned, is not correct, as to no counsel refusing to sign a complaint against another. I am ready to prove the contrary; and, in a case too so well founded, that your Lordship and the Court on my own note afforded me relief. This shows the danger of the Court constituting counsel sole judges of their own conduct. Your Lordship enjoys no such privilege, for a complaint to the Commons against you does not require to be signed by a brother Judge.

I am glad your Lordship is to submit this matter to the consideration of the Court. I have complaints to make against three members of Court of a most serious description; and I feel confident the Court will afford me justice when the obstacles are removed which prevent the facts from being brought under the consideration of the Court,—facts which have not been more ruinous to me, than they are injurious to the character of the Court, and the honour of the country.

Your Lordship has been pleased to say, that my gentleman-like conduct when last at the Bar, did not induce you to expect to receive any letter couched in the terms of my last. On that day your Lordship acted with civility towards me, and by your own admission that civility was returned. But I am sorry to say, that only a few days ago, I obtained from the Sheriff a copy of a petition and complaint against me, in which your Lordship appears to be a chief complainer; and the prayer of the petition is, that I may be apprehended and confined in a

jail. Such an unexpected discovery was not much calculated to induce me to address your Lordship in language of adulation; and it gives me much pain to say, that at the very time you was on the Bench, declaring to me that you had no feelings of resentment against me, that you had no wish to injure my character and family, that all your proceedings had been open, candid, and honourable, at that very time proceedings were secretly, and unknown to me, going on to try to make out a case to bring me to a criminal trial. My law agent was secretly examined, compelled to deliver up confidential papers belonging to me, and to disclose confidential information; but all would not do, a case could not be made out.

Now, my Lord, by your honour as a gentleman, and by your oath of office which you pledged to me when I was last in your presence, I respectfully entreat that you will inform me, if you advised that complaint against me—if you knew of its existence when I was at the Bar—if you furnished Mr Scott with any information or papers—or if you have had any communications with him, or with the Sheriff respecting it. I ask if you did instruct the same individual some time before to enter a complaint in the same secret manner against me, stating that I was deranged in my mind, and praying that I might be apprehended and confined in a mad-house. I ask if you did not instruct the same individual to go to the Star newspaper office and carry off papers belonging to me, to prevent a judgment of the Court in my cause from being made known to the public. I ask if your Lordship did not, in open Court, charge me with stating a falsehood against counsel. If you did not say that my mind was impaired. That I was not a man of a sober judgment. And, after having stated many such other charges, I ask if you did not order me from the Bar, and refuse to allow me to say any thing in my defence, or to repel your charges distinctly condescended upon.

With all these irritating circumstances crowding on my mind, and the deep loss my family have sustained from a public impression, *unfavourable to your Lordship's honour*, which an agent has taken advantage of, it may have happened that my last letter may not be couched in terms of civility, which it would have been had no such causes existed. If my other letter is to be laid before the Court, I trust you will also submit this letter in explanation of it; and as your Lordship maintains that your conduct to me has been open, fair, and honourable, I submit, if what is contained in this letter does not require from your Lordship a fair and candid explanation as to the complaint praying that I might be confined in a mad-house, —the complaint praying that I might be confined in a jail,—the carrying away my property,—the expressions used to me from the Bench,—and your refusal to allow me the privileges which criminals enjoy, the right to repel charges which are distinctly condescended upon.

I will not, my Lord, be either brow-beat or intimidated, neither am I inclined to give the Court unnecessary trouble, what I have communicated in this letter, has long been burning in my mind. I only returned from Tweedside last night, otherwise I would have wrote in course. I am ready to come to a final understanding with your Lordship. I am ready to meet your Lordship and the Court in the Robing Room, if that is preferred; or if your Lordship considers it more advisable to condescend upon distinct charges against me in open Court for the benefit of the public, all I ask is, that the public may be permitted to hear both sides of the cause.

I have the honour to be,

My Lord, your Lordship's

Most obedient and very humble servant,

JOHN HAY.

XVII.

COPY ANSWER.

Granton, 21st September 1821.

SIR,—I have received your letter of the 18th, which also I shall lay before the Court. In the complaint before the Sheriff, I believe that the proceedings were directed by the Lord Advocate, who directed a precognition to be taken relating to the slanders which you had printed and circulated against the Judges, in which precognition I was examined as a witness. And I am, &c.

Having explained your mistake in this respect, I shall not answer any further letters from you.

XVIII.

Edinburgh, 24th September 1821.

MY LORD,—I am honoured with your favour of the 21st, and it would be unfair in me to terminate our correspondence with your last, and take advantage of your Lordship without affording you an opportunity of explaining.

I was unfortunately involved, as your Lordship knows, in a personal altercation with you, in consequence of having conceived and expressed that my agent and counsel had betrayed me in a cause, by furnishing your Lordship privately with confidential letters and papers, and with having received from you private instructions respecting the conducting of that cause, which had pended before your Lordship for twelve years, in which I have expended large sums to no effect. The evidence I produced in support of my charge was my agent's business account, in which is contained distinct entries of charge for writing letters and copying papers privately sent to your Lordship, *injurious to my interest*. I also produced letters from my counsel, positively stating that your Lordship

had, unknown to me, laid down, at some private meeting with him, certain conditions, which conditions the counsel distinctly mentioned as to the manner in which he was to conduct my cause.

But from that charge I did in public Court freely acquit your Lordship, because, upon your word of honour as a gentleman, and upon your oath of office as a Judge, you assured me from the Bench, that no such correspondence or communications betwixt your Lordship and counsel had ever taken place. I did no more than my duty to your Lordship, and justice to my own feelings, when I offered an apology, as ample as I could make it, *for having unfortunately believed what my agent and counsel had written of your Lordship.* Till that time I was not aware that any counsel at the bar could have acted in such a manner; and the only thing that I am now surprised at *is*, that of your Lordship, or the Lord Advocate, not calling that counsel to account *for slandering your Lordship and defaming the Court.*

This to me is the more astonishing, as I was myself apprehended, carried before the Sheriff, and there I was examined upon the same subject; the whole papers in my possession were asked for, those in my agent's possession were forced from him. The Sheriff again and again asked me if I had been corresponding with, or complaining to, Members of Parliament of the treatment I had received, and he also very pointedly asked me what I had wrote to Lord Harrowby. I understood from his questions, that your Lordship had been honoured with a letter from the Lord President of Privy Council respecting what I had written to him.

If your Lordship out of Court acted on every occasion to me in the same honourable and upright manner as in the Court you assured me you had done, you will have no hesitation in answering to my satisfaction my former letter; in particular, that you did not personally suggest, advise, or prompt that complaint before the Sheriff, upon

which "the precognition," as you term it, was taken. I never asked who directed, or conducted the precognition; but I asked if you advised the proceeding, or if you knew of its existence when I was last in your presence. Your answer is, "In the complaint before the Sheriff, I believe "that the proceedings were directed by the Lord Advo- "cate, who directed a precognition to be taken relative to "the slanders which you had printed and circulated "against the Judges, in which precognition I was ex- "amined as a witness."

With submission, this is neither a congruous nor a business-like answer to my letter. There is a confusion in the subject, as well as in the diction, which I am unwilling to take advantage of, without affording your Lordship an opportunity of explaining. What concern has the Sheriff with contempts offered to the Judges of the Court of Session? How is that offence connected with my writing Lord Harrowby and Members of Parliament? Upon what principle of law, or for what purpose, could the Sheriff examine you as a witness?

If your Lordship will refer to my former letter, you will find that you have made no answer to it. I never asked for the information you have given me; and you have not given me the information I asked for. If complaining to Members of the House of Commons, of being wronged by your Lordship, is now to be considered a crime, or viewed as slandering the Judges, these Judges, and not the Sheriff, ought to punish such contempts as relate to their own Court,

On reconsidering my former letter along with this, I I trust you will see that I am acting fairly, in affording you an opportunity of getting out of the business before the Sheriff with clean hands; and this your Lordship can do, by distinctly stating, that you never did suggest, advise, or prompt such proceedings;—that you never did advise the Sheriff to examine me regarding what I wrote to Lord Harrowby, and to Members of the House of Com-

lumns, or give any directions whatever respecting the measures adopted. I wait your Lordship's answer, and have the honour to be,

My Lord, your Lordship's

Most obedient and very humble servant,

JOHN HAY.

To the Right Honourable Charles Hope,
Lord President of the Court of Session.

XIX.

Copy Answer.

Granton, 25th September 1821.

Sir,—Compassion for the delusion under which you appear to labour, and the conviction that you are also under the influence of very bad advice, have induced me to pay more attention to your letters than I ought. But as I became quite satisfied that my writing to you can do you no good, I intimated in my last that I should not take any farther notice of your letters,—a resolution, of the propriety of which I am still more convinced, by the impertinent, not to say insolent, tone of your letter which I received yesterday,—to which, and all others, I will return no other answer than this, that I will lay them before the Court.—And I am, &c.

XX.

Edinburgh, 29th September 1821.

My Lord,—I have to acknowledge receipt of your Lordship's communication of the 25th instant. Please accept of this as the last letter I will ever trouble you with. Enough has appeared in our correspondence to prove that we are, of all men, most uncapable of determining correctly, whether I am, or am not, "labouring under a delu-

" sion," in complaining that I have been injured, and praying that some method may be adopted by the Court to afford me relief.

On reading your last letter, I at once resolved to guard against writing a hasty reply; and that I might not act under " the influence of bad advice," I also resolved that no human being should suggest or advise an answer, or know the existence of this letter; so that, if the contents reflect disgrace on the head or on the heart, that disgrace must be placed exclusively to my own account.

In coolly looking over the copies of my former letters, I do not justify some of the expressions used; but this only applies to the manner, and not to the matter contained in them; and although your Lordship's letters are not patterns of civility, I am not inclined to found any excuse upon that head. It would be unfair, however, to judge upon what has been sent to your Lordship abstractly,—the subject must be viewed in all its bearings; and however innocently your Lordship may have acted as a man, and correctly as a Judge, I have no hesitation in saying, that the treatment I have received from you has injured my character as a member of society,—disturbed the peace of my family,—blasted my prospects in life,—and wounded the feelings of my friends.

Few young men ever entered the mercantile profession with a fairer character, or were more anxious to retain it. The merchant with whom I was instructed was strictly honourable in every transaction; and, with confidence, he recommended me to an extensive Shipping-Establishment in Leith. In a short time my employers were pleased to promote and confide in me; and during four years my salary was three times advanced. On leaving them, to embark in business, we parted upon such terms, that, in cases of difficulty, I was sent for to consult, or to instruct my successors. The following certificates, obtained after twelve years residence, precludes farther explanation:—

Leith, 19*th October* 1818.

"We, the undersigned, merchants in Leith, do here-
" by certify, that we are personally acquainted with Mr
" John Hay, who resided many years in this town, and
" who removed to Edinburgh in consequence of an en-
" engagement with the Perth Baking Company. We
" further certify, that he was considered an active man in
" business,—strictly honourable in his principles,—a re-
" spectable member in society,—and a good moral private
" character.

" James Wyld.
" James Forrest.
" Chas. Phillip.
" John Eggo.
" Adam White.
" Robert Brunton.
" Robert Neilson.
" John Wilson.
" John Menzies.
" Geo. Gibson, jun.
" Geo. Arnot.
" Geo. Carstairs."

" *Leith*, *20th October* 1818.

"That Mr John Hay, lately residenter in this parish,
" has been intimately known to me for many years:
" That from the high respectability of his public and
" private character, I was induced to recommend him as
" a proper person to become a member of the kirk session;
" and, accordingly, he was admitted to the office, and
" fulfilled its duties with fidelity and diligence, till an
" engagement with the Perth Baking Company required
" him to remove with his family to Edinburgh; and that,
" in the whole of his deportment, he was uniformly pious,
" honest, and industrious, is certified, place and date as
" above, by

" James Robertson, Minister.

" We, the undersigned, elders in South Leith, do cor-
" roborate and approve of what the Reverend Dr Robert-
" son has stated, and do certify the same.

" James Weir, Elder.
" Thos. Barker, Elder.
" W. Grieve, Elder.
" Alexr. Burnet, Elder.
" Robert Weir, Elder."

During the time I was in Leith, I had the misfortune to listen to the complaint of a dying mother. She informed me that she had lost her husband when her young daughters were minors; that a factor had been appointed by the Court of Session to take charge of their property; and that for eleven years he had rendered no account of his intromissions, and refused to do so. She earnestly implored that I would, after her death, take her unprovided daughters under my protection; that I would use every means in my power to recover their property from the hands of the factor; and on no consideration whatever abandon their interest. I promised I would implement the sacred injunction she laid upon me; and as one of the young ladies was my own wife, I never for a moment doubted my right, and my power to call the intromitter to a strict account. The mother dead, and the factor positively refusing to produce a state of his accounts, a complaint was made to the Court, praying that he might be compelled to do so, and restore the property illegally intromitted with, and forcibly detained. For twelve years I have petitioned for restitution of that property, but without effect. I have proved upon the factor fraud upon fraud, and falsehood upon falsehood; paper after paper, and pleading after pleading, has been ordered; the expense has been unbearable, but the property has not been furthcoming.

After ten years litigation, counsel advised me to take my cause out of Court, assuring me that it was not the practice of the Court to give minors the benefits of the laws which were made for the protection of their property; and that, however improper the conduct of the factor had been, he would not even be deprived of commission, although they admitted that in law it was forfeited; and they refused to state the facts and plead to them. I will not mention the expressions used to me from the Bench by your Lordship, for complaining of counsel refusing to state my cause; I shall only say, that your addresses and your threats appear to have made a strong impression on the public mind that your resentment was implacable; and to this point I now beg your attention, as I have deeply suffered from that cause.

Your Lordship has heard of the manner in which I entered upon business; you have seen the opinion which the merchants, bankers, ship-owners, clergy, and elders, entertain of my public and private character; and you do not require to be told, that five years ago, a company of merchants in Perth resolved to commence a Baking Company in Edinburgh, upon an extensive scale, which gave alarm to the bakers, and afforded table-talk to the ladies. The former united in a body, and subscribing a large sum, resolved to oppose the company, directly and indirectly, to the utmost of their power. These gentlemen disregarding the threats, did, on the other hand, instruct their agent to endeavour to find out a person capable of taking charge of, and managing their business, but uncapable of betraying trust, accepting of a bribe, or neglecting their interest. At that time I was in London upon some business; and, when there, I received a letter from a relation in Edinburgh, intimating that he had received a call from the company's agent, wishing to know if I would be soon down from London; that from the information he had received concerning me in Leith, he conceived I was the very person the Perth Company were in want of. On my

return, Mr Meek, the acting partner, and the law agent, waited upon me in my own house, and engaged me to be manager and cashier of the new establishment. The business commenced, and succeeded beyond the company's most sanguine expectation. The bakers tried various plans to reduce the sale, and at length they succeeded. I apprised the company, and advised that the plan of conducting their business might be altered, in order to counteract that adopted by their opponents. I was successful in convincing Mr Meek, the acting partner, of the necessity of doing so, but he was not successful in getting the company to resolve upon it. The business declining, I intimated that either a new plan must be adopted, or they might look out for another manager, for I saw what would happen, and I would not witness a concern perish, which had, under my management, been established, and which I knew I could preserve, with all its advantages, if properly supported. This produced from my employers a reply equally candid; they said they were now fully satisfied that the plan must be altered before their business could be again brought to its former extent; and they requested that I would state the lowest figure at which I would engage to conduct their business under the new arrangement.

It now became necessary for me to render a full state of my accounts, and obtain a settlement, before I entered upon my new agreement. My intromissions amounted to £48,000, which was all accounted for to the satisfaction of the company, less about £400; this I claimed for petty incidents, bad debts, losses, and waste, at so much per sack of flour manufactured into bread. The company's law agent objected to that claim. I offered to refer it to two respectable bakers,—that was refused. I then offered to refer the matter to merchants,—that was refused. I lastly offered to submit my claim to two lawyers,—that was also refused. The agent did not conceal that he had no chance of success by a reference, *but that in the Court*

of Session, he was sure he would get every thing against me which he asked; and that I must either comply with his terms, or go into Court. My friends became alarmed at the confident manner in which the agent acted; and under the most painful feelings *of injustice and oppression*, I resigned my situation, and signed such a settlement as the law agent directed.

I had not left the company's employment eight days (although the agent pressed me to resign in the presence of Mr Meek) till Mr Meek again sent for me; he lamented the difference which had taken place; he said the company were unwilling to part with me, and anxious to complete the new arrangement; and, from what had happened, the terms would be more favourable. He farther said, that Mr Miller, another of the partners, was to be in Edinburgh that evening, and requested me to meet them, which I did. The agent had a relation in the company, who headed a party; by this means the agent was formidable, even to the acting partner. I said to Mr Meek, "I only blame the company for putting so much power "in the agent's hands; had I permitted him to create a "business account of £40 or £50 a year against the "company, I would then by him been pronounced an "an excellent manager, and this would not have hap-"pened."—"Well, well," said Mr Meek, "let us now "make a bargain without him; I admit he will do any "thing for money." Accordingly a new agreement was entered into, and fully settled, in so far that, by desire of Mr Meek and Mr Miller, I procured and forwarded to Perth letters of security for my intromissions from my friends, and only waited the official confirmation from the company in return. This, however, was never obtained. The agent was before-hand with Mr Meek, for in various communications he made to the company and to his relation, who was a partner, he represented that I had a law process which had been before the Court for ten years;

and in whatever language he expressed himself, he succeeded in his object, namely, in producing a conviction on the mind of the majority of the company, that your Lordship was a *corrupt and vindictive Judge*, and that as I had offended you, all the Judges, as well as yourself, had shown themselves *hostile to me, and determined to ruin me*; therefore the new agreement ought not to be confirmed with a person placed in such circumstances.

Your Lordship, in your letter of the 21st current, speaks of the Lord Advocate instituting a precognition against me for slandering the Judges. Here is slandering the Judges with a vengeance; and if your Lordship and the Lord Advocate are as ready to punish that offence in the person of others as you have showed yourselves ready to punish it in my person, you will not be long in applying to me for information.

Permit me now, my Lord, most respectfully to ask your Lordship to pause, and coolly view my situation and the treatment I have received in all its bearings. You have been made acquainted with my entry upon business; you have seen the opinion the gentlemen in Leith entertain of me; you have heard the nature and the necessity of commencing an action against one of the court factors; and you know that, at the end of twelve years litigation before your Lordship, the property has not been forthcoming. On the contrary, another fortune acquired by hard toil and honest industry, has been lost in attempting to recover it. I have been assured by counsel, that the Court will not give effect to the laws. My character has been injured for complaining of being wronged; advantage has been taken of your supposed resentment in a mercantile settlement of accounts. And, as if all this had not been enough, the cup was dashed from my lips, and my family were deprived of those natural advantages resulting from my enterprise, character, and talents, *under the conviction that you are my enemy.* With truth I may use the words of the poet,

" You take my house when you do take the prop
" That doth sustain my house; you take my life
" When you take the means whereby I live."

Think seriously of these facts my Lord, and I am sure you never will again insult me, by telling me, that I am " labouring under a delusion, that my mind is impaired, " that my complaints are folly, nonsense, and trash, un- " worthy of the consideration of the Court."

In the last letter, you are at pains to impress on my mind, that, from *the weak state of my intellect*, you have, out of " compassion" to me, taken more trouble than you ought to have done in explaining. If your Lordship now enjoys possession of the Christian virtues, you will, in addition to " compassion," find enough in this letter to call forth your sympathy and regret; sympathy for an insulted, injured, and oppressed fellow subject, and regret for the share you have had in thickening the obstacles which impede his path; feelings which, with submission, I do think, might in justice have superseded the dreadful threat contained in your letter of the 14th instant.

To conclude, I do most earnestly beg to assure your Lordship, that I have no object in view but that of obtaining justice. I solemnly declare before Almighty God, that I entertain no malice towards your Lordship; and if in self-defence you force me to make an appeal to my country, and to lay my wrongs before Parliament, along with our present correspondence, I fear your Lordship will, when too late, discover that, although my grievances are by you judged unworthy of redress, your conduct to me will not be judged unworthy of consideration.

I have the honour to be,
My Lord, your Lordship's
Most obedient and very humble servant,
JOHN HAY.

The Right Hon. the Lord President
of the Court of Session.

XXI.

Mr Hay respectfully reminds the Lord President of the Court of Session of his Lordship's pledge to him, to submit Mr Hay's letter to the consideration of the Court. Mr Hay humbly entreats that the Lord President will be pleased to intimate to him the resolution formed by their Lordships on the whole correspondence betwixt the Lord President and Mr Hay. He again begs to assure his Lordship, that it is a sense of duty which induces him to persevere; and that no act of oppression, insult, or contempt, will deter him from fearlessly discharging what he considers to be the duty he owes to his character as a man, to his family as its protector, and to his country as a member of the community.

York Lane, 17th November 1821.

XXII.

NOTE from ALISON CRANSTOUN HAY, and JOHN HAY, her husband, for his interest, &c. &c. to the Right Honourable the LORD PRESIDENT of the Court of Session.

MY LORD,—On account of complaining to the Court that I had suffered by its Acts of Sederunt (particularly the Act 1789), which have altered the laws of the land, and virtually rescinded the Statutes of Parliament, I was ordered to the Bar, not to be informed that I could obtain relief, but to be told "that the Acts of Sederunt "were the laws of the land," and that I would be treated as a criminal by the Court, if ever I again complained in a similar manner. Now, my Lord, if Acts of Sederunt made by Judges are the laws of the land, it follows that those who make these laws are legislators for the nation, at least for that part of it on the north side of the Tweed.

In submitting this Note to your Lordship's consideration, I entreat you to dismiss all prejudice from your mind against me as an individual, and to keep in view that I am endeavouring to draw a distinct line between your judicial and legislative functions. I therefore humbly crave that freedom of argument in animadverting upon the laws made by the Court of Session, and in exposing their defects, which my fellow subjects in England claim and enjoy, whenever they conceive they are wronged or oppressed by laws enacted by Parliament, which, in that country, are termed the laws of the land. Indeed, in every well regulated government, the legislature courts, but never checks, the complaints of the injured,—the very object of legislating being to protect the subject in all his just rights, to secure his property, and to maintain the fair administration of justice to every member of the community. The safety of the state depends on the attainment of this paramount object; consequently, it follows that that man is considered an enemy to his Prince, and a traitor to his country, who exercises his power in the state, not for the purpose of promoting, but for the purpose of preventing justice from being administered; not for the purpose of punishing the guilty, but in order to protect them, and to punish the innocent for demonstrating that they have been wronged, and for humbly praying for justice.

If I am successful in establishing that one branch of the community, (I mean orphans possessed of property), is denied the protection provided for them by Acts of Parliament,—if I am successful in showing that, when minors' property is seized upon, and carried off from them contrary to the statutes, but under the pretence of an *Act of Sederunt* made by the Court of Session,—if I am successful in showing that this Act of Sederunt is complete mockery, and that those who made it, and caused the minors' property to be carried off, afterwards deny those minors the benefit of that very Act when they plead

restitution of their property,—if I prove all this, I submit to you, my Lord, that I do at the same time establish, by the most undoubted reasoning, that minors in Scotland are robbed of their property, unless, indeed, your Lordship can show that Judges have a constitutional right, 1*st*, to deprive minors of the protection provided by Parliament; 2*dly*, to cause their property to be carried off under the authority of a law made by the Judges themselves; and, *lastly, to deny them the protection which even that law, described by your Lordship as the law of the land, affords them.*

What crimes these defenceless objects may have committed, which warrants Judges to deprive them of both statute and sederunt-law, I know not; but there was once a time when they, in common with their fellow-subjects, enjoyed the benefit of the laws made by Parliament. The preamble of the Act of Parliament 1672, which I will just now quote, describes, with penetration and discernment, and with an accuracy almost prophetic, the result of enquiry and experience, and the whole evils which minors in Scotland are now suffering; and every section of that statute demonstrates the collective wisdom, the sound judgment, and the parental care of the Prince and of his Parliament in correcting them. "Our sovereign Lord," says the statute, "considering the great prejudice and inconveniency befalling to pupils and others, who cannot "provide for, or defend themselves, that their tutors or "curators have immediate access to their charter-chests, "writs, evidents, securities of their lands, sums of money, "and others belonging to them, which they may *embezzle*, "*suppress, or by collusion give up to their debtors*, or "other persons interested, without justification, or otherwise have got satisfaction, there is no means by which "a charge can be made up against the said tutors or curators but themselves, who, when they are brought to "account, *make up both their own charge and discharge*;

"For remede whereof, his Majesty, with advice of his "Estates of Parliament, statutes, ordains, and declares."

First, That a correct inventory of the minors' property be directed to be made up by the factor and two of the nearest relations of the children on the father and mother's side. Three duplicates of the same are to be made out and subscribed by them,—each relation to retain a copy, and the third copy to be lodged with the clerk of Court, and all countersigned by him, for the purpose, as the act declares, "that they may not be altered thereafter."

Second, That when any alteration takes place respecting the estate, by further discovery of debts or funds realized, eiks are to be added to the inventories, and the same subscribed as aforesaid.

Third, That no debtor on the estate can be compelled to make payment to the factor, till he produce an inventory so subscribed, and show that the claim is contained in the inventory, and that the debt, when recovered, shall stand as a debt against him, for behoof of the minors.

Fourth, That if any factor shall fail to make such inventories and eiks as directed in the Act, he shall be liable both for intromissions and omissions, and shall have no allowance or defalcation of the charges and expenses laid out by him in the affairs of the said pupils, in respect that, as he has failed to state to the credit of the minors sums actually received, he shall not be permitted to state to their debit sums he may have actually disbursed, and shall be removable from his office as a suspected intromitter.

Now, unfortunately for the minors in Scotland, they are, by the Act of Sederunt 1730, totally deprived of the whole protection wisely provided for them by this valuable statute, and which their defenceless condition so imperiously requires. The Lords of Council and Session have been pleased to make a law; and under the authority of that law, or rule of Court, the whole property of the minor is

intromitted with, and carried off by the factor, under the sanction of the Court of Session.

This Act of Sederunt declares, that the factor *himself* shall make up an inventory of the effects belonging to minors, and lodge the same in Court; of course the factor *makes up his charge and discharge*, which the statute 1672 expressly prohibits. But the Act of Sederunt authorizes this method, without enacting that such inventory shall be taken in the presence of persons properly qualified on behalf of the minors, or that it shall be attested by their relations, the clergyman, elders, or any other respectable persons, that it was made up in their presence, and that it contains a full and correct statement of the whole property of the deceased.

But this is not the only circumstance in the Act of Sederunt which aids the factor in securely plundering the minors' estate. That act is so framed, as virtually to prevent the relations of the minors from having any check whatever on the factor. He is declared to be a servant of the Court; and the single inventory of his own making up, after he has been *six months in possession of the estate*, is ordered to be lodged in Court with the clerk; and further, the factor is ordered to lodge with him yearly statements of his intromissions. Now, as the Court factors, in many cases, neither make up inventories, as directed by the Act, when appointed, nor lodge annual accounts, and as the court does not enforce the conditions of their Act, nor inflict the penalties in cases of disobedience, it is quite evident, that to the minors the effects are ruinous, and their property is seized upon, and intromitted with, contrary to every principle of law and justice.

Your Lordship does not require to be informed, that I have for twelve years persevered in petitioning the Court of Session for restitution of property carried off from a family of minors by a factor, under the authority of the Court itself. The property, however, has not been forthcoming. That factor, at the commencement of the action,

disputed *in toto* the right of the minor family to call him to account, telling them, in the most insulting and peremptory manner, that he held his appointment from the Court, and that it was in his option to account to them or not, just as he pleased. After the most unprecedented struggle, and the strongest opposition ever yet known in the Court of Session, or in any other court in this country, I succeeded in beating this factor out of his very entrenchments,—dragging him out of his strong-holds, and binding him with chains of his own forging; and I now leave him with those who appointed him to act,—satisfied with having exposed the obliquities of his conduct, no less than the marked injustice of the system by which he has acted.

If your Lordship doubts these averments, I refer you to that able paper drawn by Mr Miller, counsel for the pursuers; I also refer you to the accompanying letter to Mr Claud Russell, accountant.

Lord Succoth appears to have turned away his head from such a disgusting scene, for at the end of twelve years litigation, he has declined to pronounce judgment on matters of law and matters of fact, contained in the pursuers pleadings, and he has delegated to Mr Claud Russell a power to report on these points, without pronouncing judgment on the points of law in dispute. What object his Lordship had in view is doubtless known to himself, though I may not have been able to comprehend it. It is sufficient for my purpose to show that the interlocutors pronounced under Lord Succoth's directions, establish that, in pleading restitution of my property, I am denied the protection, even of that law under which it was carried off by order of the Court.

In your Lordship's letter to me the other day, you were pleased to say, that you consider yourself by no means to blame for refusing to move in Court petitions signed by parties, being expressly prohibited from so doing, by the Act of Sederunt 1789. But I beg to in-

form your Lordship, that the Statute of Parliament, which constitutes the Court of Session, expressly commands that Judges, upon reading the papers of parties, and hearing their pleadings, shall dispose of the cause, without either the signature or assistance of counsel, and which privilege was enjoyed and acted upon till the legislative enactment of 1789. Is your Lordship quite sure that the Court can, in justice to the subject, take from him that right by a law of its own making? I maintain the Court enjoys no such right, neither does the Court enjoy the right of virtually rescinding the statute of Parliament 1672, made expressly for the protection of minors. The Court may assume the power of doing so,—but power is one thing and legal right is another.

But suppose the Court had a right to rescind the statutes of Parliament, and to alter the laws of the land, and that no enactments are binding on the Judges but those of their own making, I should still be glad to know by what method of interpretation the Act of Sederunt 1789, which prevents me from petitioning for justice, is more imperative on your Lordship than the Act of Sederunt 1730, under which my property was carried off. How does it happen that you relax the law made to prevent fraud, and enforce the law made to prevent the injured party from complaining of that fraud, and praying for justice?

In the present shape of the case, I enter my humble protest against any measure being adopted by Lord Succoth in this cause, until the matter shall, in one way or other, be disposed of by the Court. But should no relief be obtained from the present communication, your Lordship must perceive that I have no alternative left me, but that of applying to the Commons of England.

I disclaim, however, every thing like malicious or criminal intention; and declare that I am, and always have been, solely actuated by a desire to obtain the restitution of property illegally intromitted with, and illegally detain-

ed. If your Lordship has any thing to communicate to me which may render such procedure unnecessary, I shall be happy to learn it at your earliest convenience.

In respect, &c.

JOHN HAY.

Edinburgh, 17th November 1821.

XXIII.

CLAUD RUSSELL, Esq.

Edinburgh, 17th November 1821.

SIR,—The second report made by you in the cause of Mr Cranstoun's children (minors), *v.* a factor of the Court, has just now been put into my hands; and it furnishes a confirmation of the correctness of the opinions which have been given me by my friends and legal advisers, "that however improperly the Court factors may act," the minors whom they plunder of their property can obtain no relief for wrongs, and that these Court functionaries will be protected, however guilty. This appeared to me utterly incomprehensible, until your report was put into my hands. I now see the whole system as clear as a sunbeam.

I had the misfortune to be defrauded of my property by a Court factor, and I conceived he could not escape, as the proof was so conclusive, that he had been guilty of fraud upon fraud, and falsehood upon falsehood. He has also been guilty of violating every condition of the law under which he was appointed by the Court; he never lodged tutorial inventories as directed by law; he never lodged annual accounts, or any accounts whatever for a period of twelve years, and even then, he disputed the right *in toto* of the family of minors to obtain a statement of accounts, or restitution of their own property. All

these charges have been clearly made out against him before Lord Succoth; and in such a manner, I imagined, that no Judge that ever sat on a Bench of Justice, could have prevented Mr Cranstoun's family from recovering a considerable portion of the wreck of their fortune, had the parties been able to get him to pronounce a judgment in the cause. For reasons, however, best known to himself at the time, and by me now fully understood, he declined to do so; and instead of judging upon the facts and points of law contained in the pleadings of the pursuers at the end of twelve years litigation, he delegated a power to you to report, and to make up a state of accounts betwixt the parties. Now, Sir, had you made your report in the least degree consistent with truth, or had you made up a state of accounts betwixt the parties in a legal manner, I should not have been under the necessity of addressing you upon such a painful subject at present.

You are very sensible, that when this factor was appointed by the Court in 1798, he subscribed a bond, and entered into a positive obligation, to lodge tutorial inventories, as directed and laid down in that act under which *he petitioned to be appointed;* and that he also bound himself, under heavy penalties, not only to lodge tutorial inventories, but also to make up, and lodge with the clerk of Court each year, distinct statements of his intromissions, charge and discharge. In order that he might securely plunder the minors, he totally failed to perform the obligations in the act; but surely this does not alter the law, or annihilate the contract, which still remains in all its original force. And in now making up a state of accounts betwixt the parties, it is clear that they must either be made up in a legal or an illegal manner. If in a legal manner, they will be made up conformably to the conditions contained in the act under which the Court appointed the factor, that is, in yearly statements, charge and discharge, the annual interest being applied to extinguish the annual family expenditure, and the balance each year car-

ried forward to the next year's statements. If in an illegal manner, then they will be made up in complete opposition to the directions contained in the act under which the factor contracted with the Court. And this is just what you have now done. You have branched out the accounts for a period of twenty-three years,—you have rendered the interest unproductive,—and, by a combination of errors, you have, in your statements, deprived the family of minors of about £4000 of the wreck of their fortune, which, both by the principles of law and justice, is absolutely their own.

You know much better than I can inform you, that I am here stating the truth. You know well that the factor cannot object to the accounts being made up by you, on the same principle, and in the same manner, in which he was by law bound to have produced them himself. You know well that the family of minors have an absolute right to get their accounts made up in that manner, any other method being illegal, and contrary to the positive and existing law under which the property was intromitted with, and carried off, by order of the Court.

It surely will not be contended, that the Court can, in justice, cause the property of minors to be carried from them under the authority of a given law, and then deny them the protection which that law affords. This would be clearly establishing that a conspiracy had been entered into to rob Mr Cranstoun's family of their property. The Lord President, Lord Succoth, and yourself, have no more right to deny me the benefit of the laws made for my protection, and under which my property was carried off, than you have a right to rob me on the highway. I do not now, therefore, beg of you, as a favour, to make up the accounts as directed in the Act of Sederunt. It was your bounden duty to have done so.

It is not my intention to attempt to convince you that either your first or second report can be corrected. I object to your statements *in toto*. The facts speak volumes,

and require little or no comment. Instead of applying the annual interest to meet the annual expenditure, as directed by the act, you have opened heads for the interest, without rendering it productive; and you have drawn the yearly expenditure from the principal, thus depriving the minors of their property, and illegally enriching the factor.

The following statement so clearly establishes the fact, that a very scanty portion of intellect is requisite for perceiving the gross injustice of your present scheme. Suppose a minor family has, under charge of a court factor, £6000 lent out at £5 per cent. they have a right to draw from the factor £300 per annum, including his commission, and the principal remains *unreduced*. But, by your system, in twenty years you would deprive them of £3150; and all they would have then remaining would be £2850, instead of £6000, although they never drew more than the interest of the £6000.

Say lent out at 5 per cent.		L.6000	
1st year, deduct family expenditure, ...		300	
		5700	Int. 1st year at 5 per cent. L.285
2d ditto,	ditto,	300	
		5400	Ditto 2d ditto 270
3d ditto,	ditto,	300	
		5100	Ditto 3d ditto 255
4th ditto,	ditto,	300	
		4800	Ditto 4th ditto 240
5th ditto,	ditto,	300	
		4500	Ditto 5th ditto 225
6th ditto,	ditto,	300	
		4200	Ditto 6th ditto 210
7th ditto,	ditto,	300	
		3900	Ditto 7th ditto 195

8th year, deduct family expenditure, ...		L.300		
		3600	Int. 4th year at 5 per cent	L.180
9th ditto,	ditto,	300		
		3300	Ditto 9th ditto	165
10th ditto,	ditto,	300		
		3000	Ditto 10th ditto	150
11th ditto,	ditto,	300		
		2700	Ditto 11th ditto	135
12th ditto,	ditto,	300		
		2400	Ditto 12th ditto	120
13th ditto,	ditto,	300		
		2100	Ditto 13th ditto	105
14th ditto,	ditto,	300		
		1800	Ditto 14th ditto	90
15th ditto,	ditto,	300		
		1500	Ditto 15th ditto	75
16th ditto,	ditto,	300		
		1200	Ditto 16th ditto	60
17th ditto,	ditto,	300		
		900	Ditto 17th ditto	45
18th ditto,	ditto,	300		
		600	Ditto 18th ditto	30
19th ditto,	ditto,	300		
		300	Ditto 19th ditto	15
20th ditto,	ditto,	300		
				L.2850

You must be satisfied that I have established my case; and that, by this method, at the end of twenty years a minor family is defrauded of property to the extent of £3150, and the sum remaining at their credit with the factor is only £2850, instead of £6000, which would have remain-

ed at their credit had the statement been made up as directed by law.

I have already said, that the pursuers were successful in clearly establishing in their pleadings, that the factor had subjected himself to the penalties of the Act, by not lodging correct tutorial inventories conformably to law. Indeed, the evidence was so conclusive, that there was not a loop-hole by which he could escape.

Lord Succoth asks, however, in his interlocutor, one of the strangest questions that ever entered the mind of a Judge, namely, if a statement of accounts, No. 8. in process, could answer the purpose, or supply the defect of tutorial inventories complained of by the pursuers.

In your report, you insinuate that such a statement supplies the defect, and that, therefore, the pursuers charge is not well founded. Take care Mr Russell that you do not bring Lord Succoth into trouble by such an insinuation, and compel me to represent him to the Commons of England, in a light which would be very painful to my feelings. His Lordship ought to have known, that the statement, No. 8. in process, is the factor's account of his intromissions, obtained only by compulsion in February 1810; and how either Lord Succoth or you can imagine that it can now be substituted for a tutorial inventory, which the law expressly required to be lodged in 1798, is quite beyond my comprehension. Had you examined the *water-mark*, you would have seen that the paper was only manufactured in 1808, and surely, both of you will have some difficulty in satisfying your consciences that the same paper could have been prepared in 1798, just ten years before it made its compulsory appearance. The truth is, the factor never lodged tutorial inventories conformably to law. Lord Succoth and you know that full well; and you ought both to have known that the statement of accounts, No. 8. in the process, cannot supply the defect. How then can you say that the

pursuers charge against the factor is not well founded, and ought to be repelled?

In the case of Middlemas, you have only stated one side of the cause, which, as usual, is quite in favour of the factor. But you are totally silent as to one of the most disgraceful frauds that was ever committed on a fatherless family,—the facts are as follow:

The factor prevailed on several of the young ladies to sign bills in favour of a person of the name of Middlemas, pretending that the family was due a large sum to him; but instead of delivering the bills so obtained to the pretended claimant, the factor put them into his own pocket; and after Middlemas was dead, he claimed payment of the bills; pretending that they had been transferred to him. This being disputed, he then got an old woman of the name of Gray, to represent Middlemas, although she was not his heir, and in her name, he conducted an action against those whom he had prevailed upon to sign these fraudulent bills. His agent, Mr James Greig, was successful, and a few months ago, under direction of the factor, he received the money;—he signed a discharge for it;—he put it in his pocket;—and he has it still in his possession. Neither the old woman Gray, nor any of her relations, have ever got a shilling, or were advised that the money had been recovered.

How you can justify the factor respecting the payment taken credit for by him, as paid to George Bell, is, if possible, still more astonishing. The factor denied to the Court, in the most unqualified manner, that he never did, in his accounts, take credit for one shilling as paid to Bell. The pursuers, however, were successful in recovering the statement of accounts betwixt Bell and the factor, *signed by the factor himself*, and *in these statements* it is clearly established that the factor allowed Bell to extinguish a debt due by him to the minors, to the extent of £300, by a counter account which Bell brought forward against the factor himself in some farming speculation. You cannot

be ignorant of this moral fraud, and of the abominable falsehood uttered by the factor to the Court. Mr Miller, the pursuers counsel, did them great justice in stating the fact; he not only produced in process the state of accounts betwixt Bell and the factor, but he marked it at the bottom of every second page with his own name; he intimated this in his pleading; and he called upon the Judge to decide if a more abominable fraud upon a family of minors had ever been practised, or so distinctly and fully detected. In the face of such evidence as this, how could you, as a gentleman and an honest man, refuse to allow the pursuers credit for the debt due to them by Bell, with the interest thereon?

In the case of the farm called Muirfield, you have presumed to determine a point of law against the pursuers, which produces a loss to them of about £1000. You could not have more effectually or satisfactorily exposed your utter ignorance, both of law and of justice, had you reported that all the pursuers ought to be hanged.

The Bench, however, as well as the Bar, will be inclined to give Lord Balgray credit for understanding the law somewhat better than an accountant like yourself.

I have just now lying on my table a legal opinion pronounced by his Lordship in this cause, before he was promoted to the Bench, in which he has most distinctly and most correctly given his opinion in favour of the pursuers. I have also on my table a letter written by his Lordship's own hand, sent me only a few months ago, confirming the correctness of his former opinion, and declaring that the judgment pronounced by him and the Court, on this very point, decides nothing in favour of the factor. You seem, however, to imagine, that you understand the meaning of the judgment pronounced by the Court much better than Lord Balgray or the Court itself, for you say, that the Court has decided (against the minors) that very point which Lord Balgray, under his own hand, declares to be not yet decided.

A competing question betwixt the heir and those with whom I act, has been decided by the Court; and if you can establish that the heir and the factor are one and the same person, the judgment pronounced in your report will then be correct. You are well aware, however, that a judgment pronounced in favour of the heir is not a judgment pronounced in favour of the factor. At least, Lord Balgray says it is not. His Lordship's words, in the letter before me, are, "The merits of any question with "the judicial factor never has, so far as I know, or ever "could be legally before the whole Court; therefore, any "observations made could only be incidental, and no way "determining any point whatever."

Your asserting, likewise, that the minor family have sustained no loss by the factor having violated every section of the acts under which he was appointed, and your recommending to Lord Succoth to allow him his commission, which is by law forfeited, is quite of a piece with your whole conduct.

But I beg leave further to remark, that your report appears to me to exhibit a monstrous, and almost incredible feature in the judicial annals of the day,—a feature no less novel than dangerous and appalling.

It has always appeared to me as an axiom which admitted of no qualification, that Judges were bound to *declare* and *administer* the law in every case that came before them;—that this power they could, by no possibility whatever, delegate or transfer to another. Yet you, Sir, an accountant, whose sole business was with sums of money, figures, and balances, have presumed to judge upon and decide every point of law, as if you had been upon the Bench. However much you may think yourself qualified to *enlighten* Lord Succoth, rest assured your decisions are both illegal and superfluous; illegal, if Lord Succoth builds his judgment on your report, and wholly superfluous if he does not. But this is not all, nor per-

haps the worst. For by no magic of interpretation can it ever be made out that Lord Succoth's remit implied that you were to step into his Lordship's shoes,—state points of law,—repel and sustain objections,—and dispose of the whole case. Lord Succoth could not transfer to you the powers which you have so arrogantly and unwarrantably assumed; and which he himself had sworn to exercise in his own person only. What, then, was the rule of your conduct in making up a state of accounts? I answer, the Act of Sederunt under which the factor was appointed by the Court, subject to the conditions therein specified. Have you adhered to this rule? It will not be pretended that you have. On the contrary, you have entered into pleadings,—repelled objections well founded,—sustained illegal charges,—and closed your report, by finding the defender due the pursuers about £300 less than he himself, also an accountant, admits; and about £3000 less than the accountant employed by the pursuers, who framed the statement comformably to the conditions laid down in the Act of Sederunt.

What your motives are, I know not; and I care as little. But be assured of one thing, that this is not a country where a man can be *ultimately* deprived of justice, with impunity, to those who have conspired to shelter from punishment a defaulter and plunderer. The equity and reasonableness of the case will inevitably make themselves felt in spite of the small arts of pettifoggers, the mysticism of accountants, and the cunning involutions of the law. By the Act of Sederunt 1730, minors are deprived of all control over their property; and will it ever be tolerated that they should also be deprived of the securities against malversation and defalcation in judicial factors, for which the very same act was specially and particularly framed? Is an Act of Sederunt nothing but the capricious and extrajudicial appointments of Judges for their own purposes, and never to be enforced except to screen a delinquent? I hope not. I would fain try to believe not. I ask for

nothing but what the Act of Sederunt not only *allows* and *commands*, and renders obligatory equally on the Court and the factor. Let that be refused, and we shall then know what an Act of Sederunt means. I cannot imagine, however, that the Judges will so sport with their duty and their oath. You ought indeed, Mr Russell, to have confined your labours to the duties of your profession as an accountant, and to have taken good heed what you were about. You ought to have assumed, as the rule of your conduct, the simple rule of law, and not have thought of covering the head of a fradulent factor, but of doing simple and substantial justice.

I am,

SIR,

Your most obedient Servant,

JOHN HAY.

THE END.

Webster, Printer, Horse Wynd.